TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 465

WALLACE R. FARRINGTON, GOVERNOR OF THE TERRITORY OF HAWAII; WILLIAM B. LYMER, ATTORNEY GENERAL, ETC., ET AL., PETITIONERS,

vs.

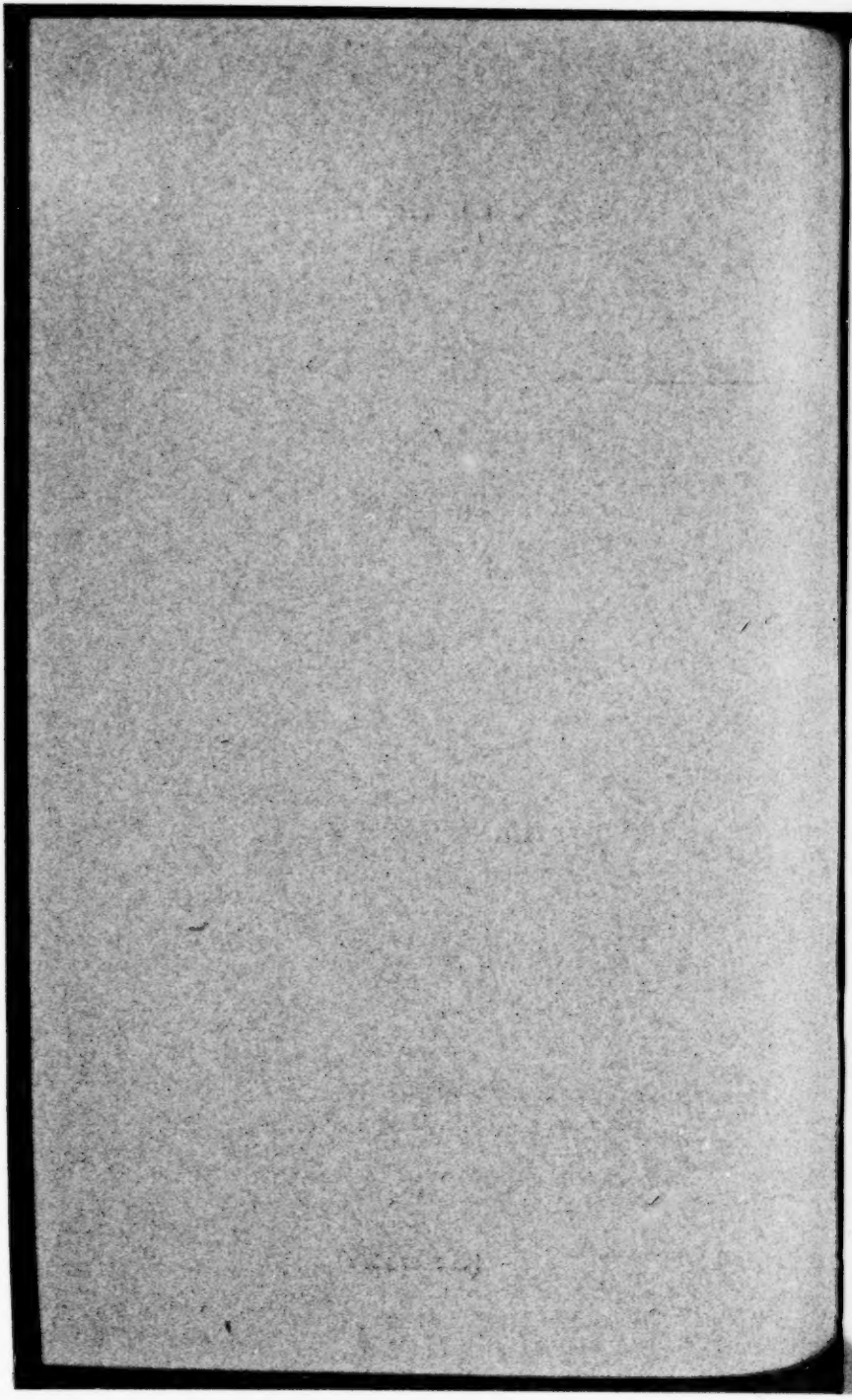
T. TOKUSHIGE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 21, 1926

CERTIORARI GRANTED OCTOBER 18, 1926

(32,032)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 30, 1926

Names of Original Parties:

T. Tokushige et al., plaintiffs.

Wallace R. Farrington et al., respondents.

Dates of Filing of Pleadings:

June 13, 1925: Plaintiffs' bill of complaint.

Service of Process:

June 13, 1925: Subpoena issued and delivered to the United States Marshal.

Time When Proceedings Were Had:

June 24, 1925: Order of continuance for hearing on motion to dissolve or modify restraining order.

June 25, 1925: Proceedings. Argument on motion to dissolve or modify restraining order.

June 26, 1925: Proceedings. Further argument on motion to dissolve or modify restraining order.

June 29, 1925: Proceedings. Further argument on motion to dissolve or modify restraining order. [2]

June 30, 1925: Proceedings. Further argument on motion to dissolve or modify restraining order.

July 1, 1925: Proceedings. Further argument on motion to dissolve or modify restraining order.

July 2, 1925: Proceedings. Order granting motion to dissolve or modify restraining order.

July 7, 1925: Order of continuance.

July 8, 1925: Proceedings. Order allowing motion to strike and preliminary injunction.

July 14, 1925: Order of continuance.

July 17, 1925: Order of continuance.

July 21, 1925: Acknowledgment of service of temporary injunction and exceptions.

Date of Filing Appeal Documents:

July 27, 1925: Petition for appeal, order allowing appeal, appeal bond, assignment of errors, praecipe for transcript of record and citation issued.

Proceedings had before the Honorable J. T. DeBolt, Judge. [3]

CERTIFICATE OF CLERK AS TO THE ABOVE STATEMENT.

United States of America,
Territory of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties thereto, the several dates when the respective pleadings were filed; an account of the service of process, the time when proceedings were had and the name of the Judge presiding and the date of filing appeal documents.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of August, A. D. 1925.

[Seal] WM. L. ROSA,
Clerk, United States District Court, Territory of Hawaii. [4]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R.

Farrington et al., Defendants. Plaintiffs' Bill of Complaint. Filed June 13/25, at 10 o'clock and 48 Minutes A. M. (S.) Wm. L. Rosa, Clerk. By ————, Deputy Clerk. Lightfoot & Lightfoot and J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, Attorneys for Plaintiffs. [5]

In the District Court of the United States in and for the District and Territory of Hawaii.

In Equity.

BILL FOR AN INJUNCTION.

EQUITY No. 272.

T. TOKUSHIGE, K. TANAKA, S. SASAKI, Members of Aiea Japanese Language School, an Unincorporated Association, F. KOOCHI, M. NISHIGAYA, S. YASHINA, Members of Chuo Gakuen, an Unincorporated Association, T. HASHIMOTO, K. KINOSHITA, T. NAKANO, Members of Ewa Shion Japanese Language School, an Unincorporated Association, M. OKAMOTO, K. SAKAI, T. ENOMOTO, Members of Haleiwa Taisho Japanese Language School, an Unincorporated Association, K. YOSHIMURA, T. HOKUSHIN, I. AOKI, Members of Hawaii Japanese Girls' School, an Unincorporated Association, K. KIMURA, M. SAKAI, S. KIYOHARA, Members of Heeia Japanese Language School, an Unincorporated Association, K. KANEMARU, C. NAKATA, Z.

TOYAMA, Members of Kahaluu Japanese Language School, an Unincorporated Association, KWANICHI MIYAJI, NISAKU IWASAKI, S. HISHINUMA, Members of Kailua Japanese Language School, an Unincorporated Association, M. SORANAKA, E. SATO, N. FUKUDA, Members of Kakaako Japanese Language School, an Unincorporated Association, U. YAMANE, T. TANIKAWA, D. NAKAYAMA, Members of Kalihi Japanese Language School, an Unincorporated Association, K. OKIMURA, J. WATANABE, A. NAKANO, Members of Manoa Japanese Language School, an Unincorporated Association, Y. KOBAYASHI, T. HIRATA, S. YAMAGUCHI, Members of Moiliili Japanese Language School, an Unincorporated Association, T. TSUJI, F. SAKUMA, I. DEWA, Members of Palama Gakuen, an Unincorporated Association, S. UYEDA, D. KAWAMURA, S. NAKASHIMA, Members of Palama Japanese Language School, an Unincorporated Association, W. EUFUJI, O. HAMAMOTO, K. NAKAGAWA, Members of Pearl City Japanese Language School, an Unincorporated Association, N. OBARA, J. KAYA, S. TOYOTA, Members of Punaluu Japanese Language School, an Unincorporated Association, T. KANNO, T. MAEDA, Y. NAKAMURA, Members of Puuloa Japanese Language

School, an Unincorporated Association, T. YAMARAKI, Y. TANOUYE, N. KOGE, Members of Toyo Gakuen, an Unincorporated Association, U. URANAKA, K. TOKUMOTO, T. ITO, Members of Wahiawa Gakuen, an Unincorporated Association, G. GINDA, H. YAMASHIRO, K. KAWAMURA, Members of Waiahole Japanese Language School, an Unincorporated Association, H. MIURA, U. MATSUO, M. OKAMOTO, Members of Waialua Japanese Language School, an Unincorporated Association, K. IBARAKI, T. MURAKAMI, N. AOKI, Members of Waikiki Japanese Language School, an Unincorporated Association, [6] M. TASAKA, T. IWANAGA, Members of Hawaii Japanese High School, an Unincorporated Association, M. TASAKA, T. IWANAGA, Members of Fort Educational Home, an Unincorporated Association, T. IKEDA, T. WATANABE, T. TOSHIYUKI, Members of Central Kona Japanese Language School, an Unincorporated Association, C. KOYA, K. YOKOYAMA, T. OKAJI, Members of Hakalau Japanese Language School, an Unincorporated Association, T. TAKAKI, T. GOUSHI, F. UYEHANA, Members of Halawa Japanese Language School, an Unincorporated Association, G. SUZUKI, J. MAEDA, S. OKINISHI, Members of Hiilea Japanese Language School, an Unincorporated Association, B. TAKEDA, Y. HATA,

I. IKEDA, Members of Hilo Educational Home, an Unincorporated Association, B. TAKEDA, Y. HATA, I. IKEDA, Members of Hilo Japanese High School, an Unincorporated Association, T. HARA, F. KUSUMOTO, I. ISONO, Members of Hilo Practical School, an Unincorporated Association, T. YONEMOTO, K. IRIE, K. INOKOJI, Members of Honokaa Japanese Language School, an Unincorporated Association, A. NANBU, K. KINOSHITA, K. SHIKASHO, Members of Honomakau Japanese Language School, an Unincorporated Association, C. MIYAKAWA, M. TANIGUCHI, K. TOKUMARU, Members of Honomu Gakuen, an Unincorporated Association, M. NAKANO, YAMADA, S. SASAKI, Members of Honuapo Japanese Language School, an Unincorporated Association, K. SAKAMOTO, T. ENDO, T. HIGASHI, Members of Hookena Japanese Language School, an Unincorporated Association, K. OKAMOTO, N. NAKAGAWA, T. TANIGUCHI, Members of Kaapahu Japanese Language School, an Unincorporated Association, G. HIGASHI, K. MONMA, K. NITTA, Members of Kapoho Japanese Language School, an Unincorporated Association, T. YOSHIDA, Y. HAMASAKI, H. IURA, Members of Kapplena Japanese Language School, an Unincorporated Association, Y. MANEKI, T.

TANOUYE, K. FUJITA, Members of Kaumana Japanese Language School, an Unincorporated Association, K. IKEDA, Y. NAGATA, Members of Keaukou Educational Home, an Unincorporated Association, S. UESUGI, C. KAMIMURA, R. FURUSHO, Members of Kohala Japanese Language School, an Unincorporated Association, B. TAGUCHI, Y. ENDO, T. SUGAHARA, Members of Kukaiau Japanese Language School, an Unincorporated Association, O. HIRAKI, K. NARAKI, S. ITO, Members of Kurtistown Japanese Language School, an Unincorporated Association, T. YAMAMOTO, A. KOMATSU, S. TAKAKI, Members of Naalehu Japanese Language School, an Unincorporated Association, Y. TAKAHATA, C. INOUYE, I. ARIYOSHI, Members of Napoopoo Japanese Language School, an Unincorporated Association, M. SHIGAKI, T. MATSUDA, R. MAEYAMA, Members of Ninole Japanese Language School, an Unincorporated Association, [7] S. HIRASHIMA, M. TAMURA, I. HOSHIDA, Members of Niulii Japanese Language School, an Unincorporated Association, T. OTO, Y. AKIYAMA, I. KASAI, Members of Olaa 9-Mile Gakuen, an Unincorporated Association, K. YAMADA, T. YANAGISAWA, A. NAKAMURA, Members of Onomea Japanese Language School, an Unincorporated Association, K. YAMAMOTO, D.

MIYAGAWA, H. OHARA, Members of Ookala Japanese Language School, an Unincorporated Association, T. MIYASAKI, T. NISHIYAMA, B. HIGA, Members of Paauilo Japanese Language School, an Unincorporated Association, T. KOIKE, K. MAEDA, U. MURAKAMI, Members of Pahala Educational Home, an Unincorporated Association, T. MARUMOTO, D. TOMINAGA, S. KITSUKI, Members of Pahala Japanese Language School, an Unincorporated Association, J. OZAKI, A. MIYABARA, M. HAYASHIKAWA, Members of Pahoa Japanese Language School, an Unincorporated Association, R. TAMAMOTO, R. SUZUKI, H. NAGAI, Members of Papaaloa Japanese Language School, an Unincorporated Association, T. MORIGAKI, K. SAKAMOTO, J. ISHIDA, Members of Papaikou Educational Home, an Unincorporated Association, I. KUROGAWA, M. HAYAKAWA, S. KIKUCHI, Members of Papaikou Japanese Language School, an Unincorporated Association, S. OGAWA, R. MORIMOTO, K. OTOCHI, Members of Piihonua Japanese Language School, an Unincorporated Association, S. YOSHIDA, K. HAYASHIDA, H. MIYAMOTO, Members of Wailea Japanese Language School, an Unincorporated Association, K. ORIMOTO, J. OGATA, D. UAMAGUCHI, Members of Wainaku Kyoritsu Japanese Language School, an Unincorpo-

rated Association, R. SHIMOTSU, I. FUJIKAWA, Y. MURAI, Members of Wainaku Jodo Mission Japanese Language School, an Unincorporated Association, M. FUJIMITSU, T. NOMURA, R. KAMEBAYASHI, Members of Anahola Japanese Language School, an Unincorporated Association, S. MIURA, I. NAKATSUKA, K. YOKOTA, Members of Hanalei Japanese Language School, an Unincorporated Association, K. OKIMOTO, J. MIURA, J. S. TERAOKA, Members of Kapaa Educational Home, an Unincorporated Association, G. OGATA, T. YOSHIMURA, K. URABE, Members of Kapaa Nissin Japanese Language School, an Unincorporated Association, N. MIYASAKI, K. OGATA, I. ARIIZUMI, Members of Kealia Educational Home, an Unincorporated Association, T. SHIMATSU, S. TOGIOKA, S. YAMASHITA, Members of Kekaha Japanese Language School, an Unincorporated Association, T. YOSHIMOTO, E. SAIKI, M. SAIKI, Members of Kilauea Japanese Language School, an Unincorporated Association, S. MURONAKA, S. EBATA, S. MATSUMOTO, Members of Koloa Japanese Language School, an Unincorporated Association, K. OKINAGA, T. YOSHI, K. HORIBE, Members of Koolau Japanese Language School, an Unincorporated Association, [8] J. MASHITA, K. MATSUMURA, M. KUNIOKA, Members of Lawai Japanese

Language School, an Unincorporated Association, T. UEDA, M. KAWATA, N. AKAZAWA, Members of Makaweli Japanese Language School, an Unincorporated Association, J. MATSUI, S. HIGASHI, N. KAWAMURA, Members of Makaweli Camp 2 Japanese Language School, an Unincorporated Association, S. YOSHIMASU, M. TANAKA, O. D. AKINORI, Members of Haiku Japanese Language School, an Unincorporated Association, K. MURANAKA, G. TOKUNAGA, S. OSHIRO, Members of Mana Japanese Language School, an Unincorporated Association, M. HORIUCHI, Y. SATSUMA, M. TOMA, Members of Honokowai Japanese Language School, an Unincorporated Association, T. KURAKAKE, K. MIHO, H. KINOSHITA, Members of Kahului Japanese Language School, an Unincorporated Association, U. HIGA, T. HANZAWA, J. IZAWA, Members of Kaupakalua Japanese Language School, an Unincorporated Association, I. FUJIBAYASHI, K. NAGATA, K. OKAMOTO, Members of Kula Japanese Language School, an Unincorporated Association, J. MURATA, J. SATO, G. MASUDA, Members of Lahaina Dowa Educational Home, an Unincorporated Association, I. TOYAMA, K. S. MATSUI, K. UMEMOTO, Members of Makawao Japanese Language School, an Unincorporated Association, S. KAWASHIMA, M. TAKAHASHI,

S. KURISU, Members of Olowalu Japanese Language School, an Unincorporated Association, S. CHIKAMORI, S. WATANABE, Y. FUKUROKU, Members of Peahi Japanese Language School, an Unincorporated Association, K. WATANABE, K. TAKAHAMA, S. YAMASAKI, Members of Wahikuli Japanese Language School, an Unincorporated Association, M. UNO, H. KANESHINA, T. HIRAI, Members of Waihee Japanese Language School, an Unincorporated Association, R. SATO, S. FURUKAWA, T. SONODA, Members of Waikapu Japanese Language School, an Unincorporated Association, G. KAWAHARA, K. YAMAMOTO, Y. YOSHIDA, Members of Wailuku Educational Home, an Unincorporated Association, on Behalf of Themselves as Members of Said Unincorporated Associations, on Behalf of All Other Members of Said Unincorporated Associations, on Behalf of the Teachers Employed by Said Unincorporated Associations, on Behalf of the Parents of Children Attending Said Schools and on Behalf of All the Other Japanese Language Schools Similarly Situated Who may Come In and Share the Costs of These Proceedings,

Plaintiffs,

vs.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LY-

MER, Attorney [9] General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Defendants.

PLAINTIFFS' BILL OF COMPLAINT.

To the Honorable, the Presiding Judges of the United States District Court in and for the District and Territory of Hawaii:

Come now the plaintiffs above named and complaining of Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, defendants above named, respectfully show unto your Honors as follows:

I.

That the defendant Wallace R. Farrington is the duly appointed, qualified and acting Governor of the Territory of Hawaii; that the defendant, William B. Lymer, is the duly appointed, qualified and acting Attorney General of the Territory of Hawaii, and the defendant, Willard E. Givens, is the duly appointed, qualified and acting Superintendent of Public Instruction of the Territory of Hawaii and as such Superintendent is the executive officer of the Department of Public Instruction of the Territory of Hawaii. That each of said defendants is a resident and citizen of the Territory of Hawaii.

II.

That all of the members of the associations here-

inafter mentioned, including those herein specifically mentioned as plaintiffs, the teachers in said schools and the parents of children attending said schools are residents of the Territory of Hawaii and are subjects of the Emperor of Japan. That the various unincorporated associations hereinafter mentioned were [10] conducting schools for the education of children in the Japanese language long prior to the enactment of the Law of 1920 as hereinafter referred to and they are now conducting said schools.

III.

That this is a suit of a civil nature in equity arising under the Constitution and Laws of the United States of America and the Treaty of Commerce and Navigation between the United States of America and the Empire of Japan. The matter in controversy exceeds the sum of Three Thousand Dollars ($3,000.00), exclusive of interest and costs.

IV.

That there are, at this time, in the Territory of Hawaii, about One Hundred Forty-six (146) schools, all voluntary unincorporated associations similarly situated to said plaintiffs; that said schools are owned and conducted by more than Five Thousand (5,000) persons; that the property belonging to said schools and used and employed in the conduct thereof exceeds in value the sum of Two Hundred Fifty Thousand Dollars ($250,000.00); that the property of plaintiffs and the property of said other schools has all been acquired and said schools have been and are being maintained and supported entirely by private funds paid, contributed and/or

raised by the members of said schools; that there are about Twenty Thousand (20,000) pupils enrolled in said schools and about Three Hundred (300) teachers employed in giving instruction therein; that in the kindergarten grades of the schools conducted by plaintiffs and of said other schools throughout the Territory the instruction is confined to simple songs and exercises and the playing of games; that in the various grades in the schools conducted by plaintiffs and by said other schools, the instruction is confined to the teaching of the Japanese language and the [11] various methods of writing the same. That neither in said kindergarten nor in said grades of said schools is anything taught which is unAmerican or contrary to the ideals of democracy, but on the other hand, the teaching in said schools inculcates, and is intended to inculcate, in the minds of the pupils attending the same, a respect for the institutions and laws of the United States of America.

V.

That this petition is filed by the said plaintiffs in their own behalf and on behalf of the other owners of said schools; on behalf of the teachers employed in said schools, on behalf of the parents of the children attending said schools, and on behalf of all other Japanese language schools similarly situated, who may come in and share the costs of these proceedings.

VI.

That T. Tokoshige, K. Tanaka and S. Sasaki are members of the Aiea Japanese Language School, an

unincorporated association; that there are 143 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 4 teachers; that there are 100 pupils attending said school of whom 31 are in the first grade and 50 are in the second grade; that the said unincorporated association is the owner of property worth $400.00.

That F. Koochi, M. Nishigaya and S. Yashina are members of the Chuo Gakuen, an unincorporated association; that there are 500 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association [12] employs 10 teachers; that there are 390 pupils attending said school of whom 90 are in the kindergarten, 165 are in the first grade and 135 are in the second grade; that the said unincorporated association is the owner of property worth $20,000.00.

That T. Hashimoto, K. Kinoshita and T. Nakano are members of the Ewa Shion Japanese Language School, an unincorporated association; that there are 48 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 107 pupils attending said school of whom 26 are in the kindergarten and 10 are in the second grade; that the said unincorporated association is the owner of property worth $120.00.

That M. Okamoto, K. Sakai and T. Enomoto are members of the Haleiwa Taisho Japanese Language School, an unincorporated association; that there are 119 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 4 teachers; that there are now 97 pupils attending said school of whom 17 are in the kindergarten, 41 are in the first grade and 39 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That K. Yoshimura, T. Hokushin and I. Aoki are members of the Hawaii Japanese Girls' School, an unincorporated association; that there are 115 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 5 teachers; that there are 114 pupils attending said school of whom 20 are in the first grade [13] and 25 are in the second grade; that the said unincorporated association is the owner of property worth $7,500.00.

That K. Kimura, M. Sakai and S. Kiyohara are members of the Heeia Japanese Language School, an unincorporated association; that there are 51 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 105 pupils attending said school of whom 27 are in the first grade and 13 are in the second

grade; that the said unincorporated association is the owner of property worth $1,000.00.

That Kinzo Kanemaru, C. Nakata and Z. Toyama are members of the Kahaluu Japanese Language School, an unincorporated association; that there are 52 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 64 pupils attending said school of whom 13 are in the first grade and 10 are in the second grade; that the said unincorporated association is the owner of property worth $300.00.

That K. Miyaji, N. Iwasaki and S. Hishinuma are members of the Kailua Japanese Language School, an unincorporated association; that there are 53 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 64 pupils attending said school of whom 17 are in the first grade and 6 are in the second grade; that the said unincorporated association is the owner of property worth $1,750.00. [14]

That M. Soranaka, E. Sato and N. Fukuda are members of the Kakaako Japanese Language School, an unincorporated association; that there are 110 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 123 pupils attending said school of

whom 10 are in the kindergarten, 25 are in the first grade and 20 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That U. Yamane, T. Tanigawa and D. Nakayama are members of the Kalihi Japanese Language School, an unincorporated association; that there are 150 members of said unincorporated association, which members are owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 259 pupils attending said school of whom 57 are in the first grade and 44 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That K. Okimura, J. Watanabe and A. Nakano are members of the Manoa Japanese Language School, an unincorporated association; that there are 90 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 117 pupils attending said school of whom 40 are in the first grade and 43 are in the second grade; that the said unincorporated association is the owner of property worth $3,000.00. [15]

That Y. Kobayashi, T. Hirata and S. Yamaguchi are members of the Moiliili Japanese Language School, an unincorporated association; that there are 300 members of said unincorporated association, which members are the owners of the property be-

longing to said unincorporated association; that said unincorporated association employs 7 teachers; that there are 634 pupils attending said school; that the said unincorporated association is the owner of property worth $5,540.00.

That T. Tsuji, F. Sakuma and I. Dewa are members of the Palama Gakuen, an unincorporated association; that there are 319 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 7 teachers; that there are 585 pupils attending said school of whom 56 are in the kindergarten; that the said unincorporated association is the owner of property worth $5,000.00.

That S. Uyeda, D. Kawamura and S. Nakashima are members of the Palama Japanese Language School, an unincorporated association; that there are 460 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 8 teachers; that there are 714 pupils attending said school of whom 58 are in the kindergarten, 160 are in the first grade and 125 are in the second grade; that the said unincorporated association is the owner of property worth $5,000.00.

That U. Uefuji, O. Hamamoto and K. Nakagawa are members of the Pearl City Japanese Language School, an unincorporated association; that there are 70 members of said unincorporated association, which members are the owners of the property be-

longing [16] to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 44 pupils attending said school of whom 26 are in the first grade and 18 are in the second grade; that the said unincorporated association is the owner of property worth $300.00.

That N. Obara, J. Kaya and S. Toyota are members of the Punaluu Japanese Language School, an unincorporated association; that there are 31 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 36 pupils attending said school of whom 7 are in the kindergarten, 10 are in the first grade and 5 are in the second grade; that the said unincorporated association is the owner of property worth $750.00.

That T. Kanno, T. Maeda and Y. Nakamura are members of the Puuloa Japanese Language School, an unincorporated association; that there are 30 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 73 pupils attending said school of whom 8 are in the second grade; that the said unincorporated association is the owner of property worth $300.00.

That T. Yamasaki, Y. Tanouye and N. Kage are members of the Toyo Gakuen, an unincorporated association; that there are 150 members of said un-

incorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 232 pupils attending said school of whom 25 are in the kindergarten, 50 are in the first [17] grade and 35 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That U. Uranaka, K. Tokumoto and R. Ito are members of the Wahiawa Gakuen, an unincorporated association; that there are 136 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 4 teachers; that there are 385 pupils attending said school; that the said unincorporated association is the owner of property worth $3,000.00.

That G. Ginda, H. Yamashiro and K. Kawamura are members of the Waiahole Japanese Language School, an unincorporated association; that there are 15 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 15 pupils attending said school of whom 15 are in the first grade; that the said unincorporated association is the owner of property worth $50.00.

That H. Miura, U. Matsuo and M. Okamoto are members of the Waialua Japanese Language School,

an unincorporated association; that there are 70 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 188 pupils attending said school of whom 32 are in the kindergarten, 23 are in the first grade and 17 are in the second grade; that the said unincorporated association is the owner of property worth $100.00. [18]

That K. Ibaraki, T. Murakami and N. Aoki are members of the Waikiki Japanese Language School, an unincorporated association; that there are 100 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 112 pupils attending said school; that the said unincorporated association is the owner of property worth $1,000.00.

That M. Tasaka and I. Iwanaga are members of the Hawaii Japanese High School, an unincorporated association; that there are 599 pupils in the first and second grades of said unincorporated association.

That M. Tasaka and I. Iwanaga are members of the Fort Educational Home, an unincorporated association and that there are 470 pupils in the first and second grades of said unincorporated association.

That T. Ikeda, T. Watanabe and T. Toshiyuki are members of the Central Kona Japanese Language

School, an unincorporated association; that there are 86 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 4 teachers; that there are 222 pupils attending said school of whom 35 are in the first grade and 34 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That C. Koya, K. Yokoyama and T. Okaji are members of the Hakalau Japanese Language School, an unincorporated association; that there are 56 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association [19] employs 3 teachers; that there are 165 pupils attending said school of whom 17 are in the first grade and 10 are in the second grade; that the said unincorporated association is the owner of property worth $850.00.

That T. Takaki, T. Goushi and F. Uyehana are members of the Halawa Japanese Language School, an unincorporated association; that there are 26 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 60 pupils attending said school of whom 5 are in the kindergarten, 11 are the first grade and 3 are in the second grade; that the said unincorporated association is the owner of property worth $600.00.

That G. Suzuki, J. Maeda and S. Okinishi are members of the Hiilea Japanese Language School, an unincorporated association; that there are 11 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 1 teacher; that there are 26 pupils attending said school of whom 2 are in the kindergarten, 4 are in the first grade and 3 are in the second grade; that the said unincorporated association is the owner of property worth $100.00.

That B. Takeda, Y. Hata and T. Ikeda are members of the Hilo Educational Home, an unincorporated association; that there are 168 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 6 teachers; that there are 327 pupils attending [20] said school of whom 26 are in the kindergarten, 3 are in the first grade and 13 are in the second grade; that the said unincorporated association is the owner of property worth $3,200.00.

That B. Takeda, Y. Hata and T. Ikeda are members of the Hilo Japanese High School, an unincorporated association; that there are 83 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 2 teachers; that there are 119 pupils attending said school; that the said unincor-

porated association is the owner of property worth $3,200.00.

That T. Hara, F. Kusumoto and I. Isono are members of the Hilo Practical School, an unincorporated association; that there are 48 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 3 teachers; that there are 137 pupils attending said school of whom 10 are in the kindergarten, 11 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That T. Yonemoto, K. Irie and K. Inokoji are members of the Honokaa Japanese Language School, an unincorporated association; that there are 52 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 2 teachers; that there are 220 pupils attending said school of whom 30 are in the first grade and 20 are in the second grade; that the said unincorporated association is the owner of property worth $5,000.00. [21]

That A. Nanbu, K. Kinoshita and K. Shikasho are members of the Honomakau Japanese Language School, an unincorporated association; that there are 21 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 1 teacher;

that there are 63 pupils attending said school of whom 9 are in the first grade and 3 are in the second grade; that the said unincorporated association is the owner of property worth $625.00.

That C. Miyakawa, M. Taniguchi and K. Takumaru are members of the Honomu Gakuen, an unincorporated association; that there are 33 members of said unincorporated association, which members are the owners of property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 53 pupils attending said school of whom 17 are in the kindergarten, 32 are in the first grade and 13 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That M. Nakao, Yamada and S. Sasaki are members of the Honuapo Japanese Language School, an unincorporated association; that there are 13 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 32 pupils attending said school of whom 5 are in the first grade and 4 are in the second grade; that the said unincorporated association is the owner of property worth $100.00.

That K. Sakamoto, T. Endo and T. Higashi are members of the Hookena Japanese Language School, an unincorporated association; that there are 12 members of said unincorporated association, [22] which members are the owners of the property belonging to said unincorporated association;

that said unincorporated association employs 1 teacher; that there are 25 pupils attending said school of whom 6 are in the first grade and 4 are in the second grade; that the said unincorporated association is the owner of property worth $50.00.

That K. Okamoto, N. Nakagawa and M. Taniguchi are members of the Kaapahu Japanese Language School, an unincorporated association; that there are 28 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 52 pupils attending said school of whom 5 are in the first grade and 7 are in the second grade; that the said unincorporated association is the owner of property worth $150.00.

That G. Higashi, K. Monma and K. Nitta are members of the Kapoho Japanese Language School, an unincorporated association; that there are 6 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 1 teacher; that there are 46 pupils attending said school of whom 5 are in the kindergarten, 15 are in the first grade and 13 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That T. Yoshida, Y. Hamasako and H. Iura are members of the Kapulena Japanese Language School, an unincorporated association; that there are 20 members of said unincorporated association,

which members are the owners of the property belonging to said unincorporated association; that said unincorporated association [23] employs 1 teacher; that there are 32 pupils attending said school of whom 4 are in the kindergarten, 4 are in the first grade and 3 are in the second grade; that the said unincorporated association is the owner of property worth $400.00.

That Y. Manoki, T. Tanouye and K. Fujita are members of the Kaumana Japanese Language School, an unincorporated association; that there are 32 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 97 pupils attending said school of whom 11 are in the first grade and 8 are in the second grade; that said unincorporated association is the owner of property worth $1,450.00.

That K. Ikeda and Y. Nagata are members of the Keauhou Educational Home, an unincorporated association; that there are 19 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 45 pupils attending said school of whom 5 are in the first grade and 8 are in the second grade; that the said unincorporated association is the owner of property worth $250.00.

That S. Uesugi, C. Kamimura and R. Furusho are members of the Kohala Japanese Language

School, an unincorporated association; that there are 100 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 94 pupils attending said school of whom 5 are in the kindergarten, 16 are in the first grade and 10 are in the second grade; [24] that the said unincorporated association is the owner of property worth $300.00.

That B. Toguchi, Y. Endo and T. Sugahara are members of the Kukaiau Japanese Language School, an unincorporated association; that there are 24 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 94 pupils attending said schools of whom 5 are in the first grade and 7 are in the second grade; that the said unincorporated association is the owner of property worth $500.00.

That O. Hiraki, K. Naraki and S. Ito are members of the Kurtistown Japanese Language School, an unincorporated association; that there are 38 members of said uincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers, that there are 108 pupils attending said school of whom 7 are in the kindergarten, 10 are in the first grade and 19 are in the second grade; that the said unincorporated association is the owner of property worth $4,000.00.

That T. Yamamoto, A. Komatsu and S. Takaki are members of the Naalehu Japanese Language School, an unincorporated association; that there are 25 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 59 pupils attending said school of whom 15 are in the first grade and 3 are in the second grade; that the said unincorporated association is the owner of property worth $350.00 [25]

That Y. Takahata, C. Inouo and I. Ariyoshi are members of the Napoopoo Japanese Language School, an unincorporated association; that there are 48 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 97 pupils attending said school of whom 24 are in the first grade and 16 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That M. Shigaki, T. Matsuda and R. Meayama are members of the Ninole Japanese Language School, an unincorporated association; that there are 66 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 162 pupils attending said school of whom 22 are in the first grade and 17 are in the second

grade; that the said unincorporated association is the owner of property worth $1,580.00.

That S. Hirashima, M. Tamura and I. Hosaida are members of the Niulii Japanese Language School, an unincorporated association; that there are 26 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 2 teachers; that there are 81 pupils attending said school of whom 3 are in the first grade and 4 are in the second grade; that the said unincorporated association is the owner of property worth $2,960.00.

That T. Oto, Y. Akiyama and I. Kasai are members of the Olaa 9-Mile Gakuen, an unincorporated association; that there are 115 members of said unincorporated association, which [26] members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 297 pupils attending said school of whom 40 are in the kindergarten, 41 are in the first grade and 26 are in the second grade; that the said unincorporated association is the owner of property worth $2,500.00.

That K. Yamada, T. Yanagisawa and A. Nakamura are members of the Onomea Japanese Language School, an unincorporated association; that there are 30 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 55 pupils attending said

school of whom 21 are in the kindergarten and 2 are in the second grade; that the said unincorporated association is the owner of property worth $200.00.

That K. Yamamoto, D. Miyagawa and H. Ohara are members of the Ookala Japanese Language School, an unincorporated association; that there are 39 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 71 pupils attending said school of whom 7 are in the kindergarten, 8 are in the first grade and 12 are in the second grade; that the said unincorporated association is the owner of property worth $700.00.

That T. Koike, K. Maoda and U. Murakami are members of the Pahala Educational Home, an unincorporated association; that there are 48 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 91 pupils attending [27] said school of whom 6 are in the kindergarten, 8 are in the first grade and 15 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That T. Marumoto, D. Tominaga and S. Kitsuki are members of the Pahala Japanese Language School, an unincorporated association; that there are 32 members of said unincorporated association, which

members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 68 pupils attending said school of whom 7 are in the kindergarten, 8 are in the first grade and 12 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That J. Ozaki, A. Miyabara and M. Hayashikawa are members of the Pahoa Japanese Language School, an unincorporated association; that there are 68 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 195 pupils attending said school, of whom 20 are in the kindergarten, 15 are in the first grade and 6 are in the second grade; that the said unincorporated association is the owner of property worth $2,300.00.

That R. Tamamoto, R. Suzuki and H. Nagai are members of the Papaaloa Japanese Language School, an unincorporated association; that there are 51 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 118 pupils attending said school of whom 24 are in the kindergarten, 21 are in the first grade and 18 are in the second grade; that the said unincorporated [28] association is the owner of property worth $2,500.00.

That T. Morigaki, K. Sakamoto and J. Ishida are members of the Papaikou Educational Home, an unincorporated association, that there are 64 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 4 teachers; that there are 155 pupils attending said school of whom 10 are in the kindergarten, 33 are in the first grade and 19 are in the second grade; that the said unincorporated association is the owner of property worth $800.00.

That I. Kurokawa, M. Hayakawa and S. Kikuchi are members of the Papaikou Japanese Language School, an unincorporated association; that there are 77 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 240 pupils attending said school of whom 11 are in the kindergarten, 31 are in the first grade and 31 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That S. Ogawa, R. Morimoto and K. Otochi are members of the Piihonua Japanese Language School, an unincorporated association; that there are 21 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 67 pupils attending said school of

whom 8 are in the first grade and 8 are in the second grade; that the said unincorporated association is the owner of property worth $1,570.00. [29]

That S. Yoshida, K. Hayashida and H. Miyamoto are members of the Wailea Japanese Language School, an unincorporated association; that there are 24 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 82 pupils attending said school of whom 8 are in the first grade and 6 are in the second grade; that the said unincorporated association is the owner of property worth $300.00.

That K. Orimoto, J. Ogata and D. Uamaguchi are members of the Wainaku Kyoritsu Japanese language School, an unincorporated association; that there are 55 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 126 pupils attending said school of whom 25 are in the first grade and 10 are in the second grade; that the said unincorporated association is the owner of property worth $2,000.00.

That R. Shimotsu, I. Fujikawa and Y. Murai are members of the Wainaku Jodo Mission School, an unincorporated association; that there are 72 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 2 teachers; that

there are 106 pupils attending said school of whom 22 are in the first grade and 24 are in the second grade; that the said unincorporated association is the owner of property worth $7,000.00.

That T. Miyasaki, T. Nishiyama and B. Higa are members of the Paauilo Japanese Language School, an unincorporated association; that the said unincorporated association employs 2 teachers and that there are 104 pupils attending said school. [30]

That M. Fujimitsu, T. Nomura and R. Kamebayashi are members of the Anahola Japanese Language School, an unincorporated association; that there are 11 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 44 pupils attending said school; that the said unincorporated association is the owner of property worth $200.00.

That S. Miura, I. Nakatsuka and K. Yokota are members of the Hanalei Japanese Language School, an unincorporated association; that there are 28 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 1 teacher; that there are 35 pupils attending said school of whom 21 are in the first grade and 14 are in the second grade; that the said unincorporated association is the owner of property worth $800.00.

That K. Okimoto, J. Miura and J. S. Teraoka are members of the Kapaa Educational Home, an un-

incorporated association; that there are 68 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 129 pupils attending said school of whom 10 are in the first grade and 7 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That S. Ogata, T. Yoshimura and K. Urabe are members of the Kapaa Nissin Japanese School, an unincorporated association; that there are 30 members of said unincorporated [31] association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 56 pupils attending said school; that the said unincorporated association is the owner of property worth $1,000.00.

That N. Miyasaki, K. Ogata and I. Arrizumi are members of the Kealia Educational Home, an unincorporated association; that there are 26 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 53 pupils attending said school of whom 1 is in the second grade; that the said unincorporated association is the owner of property worth $3,000.00.

That T. Shimatsu, S. Tokioka and S. Yamashita are members of the Kekaha Japanese Language School, an unincorporated association; that there

are 142 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 142 pupils attending said school of whom 21 are in the kindergarten, 20 are in the first grade and 15 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That T. Yoshimoto, E. Saiki and M. Saiki are members of the Kilauea Japanese Language School, an unincorporated association; that there are 28 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 67 pupils attending said school of whom 19 are in the first grade and 6 are in the second [32] grade; that the said unincorporated association is the owner of property worth $2,500.00.

That S. Muranaka, S. Ebata and S. Matsumoto are members of the Koloa Japanese Language School, an unincorporated association; that there are 30 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 162 pupils attending said school of whom 15 are in the first grade and 20 are in the second grade; that the said unincorporated association is the owner of property worth $500.00.

That K. Okinaga, T. Yoshi and K. Horibe are

members of the Koolau Japanese Language School, an unincorporated association; that there are 24 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 42 pupils attending said school of whom 7 are in the first grade and 8 are in the second grade; that the said unincorporated association is the owner of property worth $150.00.

That J. Mashita, K. Matsumura and M. Kunioka are members of the Lawai Japanese Language School, an unincorporated association; that there are 43 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 76 pupils attending said school of whom 14 are in the first grade and 8 are in the second grade; that the said unincorporated association is the owner of property worth $500.00 [33]

That T. Ueda, M. Kawata and N. Okazawa are members of the Makaweli Japanese Language School, an unincorporated association; that there are 90 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 130 pupils attending said school of whom 25 are in the second grade; that the said unincorporated association is the owner of property worth $400.00.

That J. Matsui, S. Higoshi and N. Kawamura are members of the Makaweli Camp 2 Japanese Language School; an unincorporated association; that there are 20 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 45 pupils attending said school of whom 16 are in the first grade and 1 is in the second grade; that the said unincorporated association is the owner of property worth $150.00;

That K. Muranaka, G. Tokunaga and S. Oshiro are members of the Mana Japanese Language School, an unincorporated association; that there are 19 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 30 pupils attending said school of whom 26 are in the first grade; that the said unincorporated association is the owner of property worth $325.00.

That M. Tanaka, C. D. Akinori and S. Yoshimasu are members of the Haiku Japanese Language School, an unincorporated association; that there are 150 members of said unincorporated association, which members are the owners of the property belonging to [34] said unincorporated association; that said unincorporated association employs 4 teachers; that there are 260 pupils attending said school of whom 45 are in the first grade and 30 are

in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That M. Horiuchi, Y. Patsuma and M. Toma are members of the Honokowai Japanese Language School, an unincorporated association; that there are 7 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 29 pupils attending said school of whom 10 are in the second grade; that the said unincorporated association is the owner of property worth $15.00.

That T. Kurakake, K. Miho and H. Kinoshita are members of the Kahului Japanese Language School, an unincorporated association; that there are 81 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 178 pupils attending said school of whom 47 are in the first grade and 7 are in the second grade; that the said unincorporated association is the owner of property worth $2,500.00.

That U. Higa, T. Hanzawa and J. Izawa are members of the Kaupakalua Japanese Language School, an unincorporated association; that there are 31 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 84 pupils attending said school of whom 5 are in the first grade and 9 are in the second grade;

that the said unincorporated association is the owner of property worth $500.00 [35]

That I. Fujibayashi, K. Nagata and K. Okamoto are members of the Kula Japanese Language School an unincorporated association; that there are 37 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association that said unincorporated association employs 1 teacher; that there are 75 pupils attending said school of whom 12 are in the first grade and 8 are in the second grade; that the said unincorporated association is the owner of property worth $500.00.

That J. Murata, J. Sato and G. Masuda are members of the Lahiana Dowa Educational Home, an unincorporated association; that there are 122 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 267 pupils attending said school of whom 75 are in the first grade and 16 are in the second grade; that the said unincorporated association is the owner of property worth $2,500.00.

That I. Toyama, K. S. Matsui and K. Umemoto are members of the Mokawao Japanese Language School, an unincorporated association; that there are 41 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 89 pupils attending said school of

whom 7 are in the kindergarten, 30 are in the first grade and 17 are in the second grade; that the said unincorporated association is the owner of property worth $500.00.

That S. Kawashima, M. Takahashi and S. Kurisu are members of the Olowalu Japanese Language School, an unincorporated association; [36] that there are 12 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 28 pupils attending said school of whom 7 are in the first grade; that the said unincorporated association is the owner of property worth $125.00.

That S. Chikamori, S. Watanabe and Y. Fukuroku are members of the Peahi Japanese Language School, an unincorporated association; that there are 45 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 130 pupils attending said school of whom 5 are in the second grade; that the said unincorporated association is the owner of property worth $1,300.00.

That K. Watanabe, K. Takahama and S. Yamasaki are members of the Wahikuli Japanese Language School, an unincorporated association; that there are 7 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1

teacher; that there are 19 pupils attending said school of whom 4 are in the first grade and 2 are in the second grade; that the said unincorporated association is the owner of property worth $17.00.

That M. Uno, H. Kaneshina and T. Hirai are members of the Waihee Japanese Language School, an unincorporated association; that there are 21 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 53 pupils attending said school of whom 9 are in the first grade and 8 are in the [37] second grade; that the said unincorporated association is the owner of property worth $350.00.

That R. Sato, S. Furukawa and T. Sonoda are members of the Waikapu Japanese Language School, an unincorporated association; that there are 38 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 84 pupils attending said school of whom 9 are in the first grade and 15 are in the second grade; that the said unincorporated association is worth $1,000.00.

That G. Kawahara, K. Yamamoto and Y. Yoshida are members of the Wailuku Educational Home, an unincorporated association; that there are 108 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that

said unincorporated association employs 3 teachers; that there are 327 pupils attending said school of whom 51 are in the first grade and 20 are in the second grade; that the said unincorporated association is the owner of property worth $3,500.00.

VII.

That during a special session of the Legislature of the Territory of Hawaii held in the year 1920, there was passed an act designated "Act 30" duly approved on the 24th day of November, 1920, entitled "An act relating to the foreign language schools and the teachers thereof"; that during the session of the Legislature of the Territory of Hawaii held in the year 1923, there was passed an act designated "Act 171" duly approved on the 2d day of May, 1923, entitled "An act to amend sections 1, 2, 4, 7 and 8 of Act 30 of the Special Sessions Laws of 1920, and [38] adding thereto a new section to be known as Section 9a relating to Foreign Language Schools"; that the said Acts of 1920 and 1923 are embodied in the Revised Laws of Hawaii of 1925 as Chapter 32, including Sections 390 to 399 of said Revised Laws,

That during a Session of the Legislature of the Territory of Hawaii held in the year 1925, there was passed an act designated "Act 152" entitled "An act to amend Sections 391 and 398 of the Revised Laws of Hawaii, 1925, relating to Foreign Language Schools."

That a copy of the Act of 1920 as amended by the Act of 1923 and as further amended by the Act of 1925, as aforesaid, is hereto attached, marked

Exhibit "A" and which plaintiffs pray may be made part of this, their bill.

VIII.

That on the 1st y of June, 1925, the Department of Public Instruction adopted a certain resolution relating to the foreign language schools of the Territory, which resolutions were duly approved by the Governor of the Territory of Hawaii on the said last-mentioned date; that a copy of the said resolutions are hereto attached, marked Exhibit "B" and which plaintiffs pray may be made part of this, their bill.

IX.

And plaintiffs further show unto your Honors that there are in the Territory of Hawaii very many private schools supported and maintained by private individuals, associations and corporations furnishing instruction to children of school age in the Territory of Hawaii, and in which schools foreign languages are taught; that the Department of Public Instruction [39] does not prescribe, by regulations, the subjects and courses of study, the entrance and attendance prerequisite or qualifications of education, age, school attainments, demonstrated mental capacity, health and otherwise of the children attending said schools, nor does it prescribe the text-books to be used in said private schools, nor any of said private schools taxed, nor is any fee required of said private schools, for the privilege of conducting the same, nor is a pledge required of those conducting said private schools or teaching therein, as provided for those conducting

and teaching in foreign language schools under the provisions of Section 394 of the Revised Laws of Hawaii of 1925.

X.

That plaintiffs with other members of said unincorporated associations, conduct schools for the education of children in the Japanese language and employ teachers for that purpose, as aforesaid, and that plaintiffs and other members of said unincorporated association, who exercise and perform administration powers in reference to said schools and many of the teachers engaged therein are unable to read, write and speak the English language, and are unable to secure the permit referred to in Section 392 and 393 of the Revised Laws of 1925.

XI.

That there are in all 163 Foreign Language Schools in the Territory of Hawaii affected by the said Foreign Language School Acts; that of said schools nine are conducted in the Korean Language and seven in the Chinese language and that the remainder of said schools are conducted in the Japanese language and that all of said Foreign Language Schools are conducted and attended solely by persons of the Korean, Chinese and Japanese races. [40]

XI-a.

That in the conduct of the said schools by plaintiffs the hours of attendance thereat are so arranged as not to interfere with the attendance by the pupils therein of school age at the Government schools of the said Territory but on the contrary

the pupils attending said schools conducted by plaintiffs are urged and required to attend the said Government schools in their respective communities and said pupils do attend said Government schools throughout the said terms thereof.

That in said Government schools the Japanese language is not taught to the pupils thereof nor are the teachers teaching in said schools qualified to teach said language.

XI-b.

That plaintiffs as members of said schools, as aforesaid, are required to perform administrative duties with respect to the same; that is to say, they are required to procure suitable buildings and sanitary surroundings, to hire teachers and janitors and other servants, to collect moneys for the support and maintenance of said schools, to collect fees from the parents of children attending said schools, and, generally, to attend to the business matters connected with said schools.

That in performing the administrative duties, as aforesaid, plaintiffs almost exclusively deal with persons who speak the Japanese language and are unable to speak, read and write the English language. [41]

XII.

That many of the schools conducted by plaintiffs, as aforesaid, have connected therewith kindergarten departments; that the children attending said kindergarten departments are under the age at which attendance at the Government schools is made compulsory or permitted by law, and said children at-

tending said kindergarten departments do not attend the Government schools nor do they attend other private schools having a curriculum similar to that of the Government schools.

XIII.

That said Acts and said Rules and Regulations, above mentioned, are violative of the rights of the plaintiffs under the Constitution of the United States in that they deny to them the equal protection of the laws and deprive them of liberty and property without due process of law, which is guaranteed by Section 1 of the Fourteenth Amendment of said Constitution to all persons submitting themselves to the jurisdiction of the United States whether citizens or aliens.

XIV.

That said Acts and said Rules and Regulations, above mentioned, are violative of the rights of plaintiffs under the Constitution of the United States in that they deprive them of liberty and property without due process of law as guaranteed by the Fifth Amendment of said Constitution.

XV.

That said Acts and said Rules and Regulations, above mentioned, are in conflict with, repugnant to and violate Section 1977 of the Revised Statutes of the United States. [42]

XVI.

That said Acts and said Rules and Regulations, above mentioned, are in violation of and contrary to the existing treaty between the United States of America and the Empire of Japan providing that

"The citizens or subjects of each of the high contracting parties shall receive in the territories of the other the most constant protection and security for their persons and property and shall enjoy in this respect the same rights and privileges as are or may be granted to native citizens or subjects on their submitting themselves to the conditions imposed upon the native citizens or subjects."

XVII.

That said Acts and said Rules and Regulations, above mentioned, are in violation of and contrary to the existing Treaty between the United States of America and the Empire of Japan providing that "They (referring to American citizens or Japanese subjects) shall not be compelled under any pretext whatever to pay any charges or taxes other or higher than those that are or may be paid by native citizens or subjects."

XVIII.

That said Acts and said Regulations are invalid for the further reason that they are unreasonable, arbitrary, oppressive, capricious, inequitable, confiscatory, discriminatory and unjust and made to depend on a difference of race.

XIX.

That said Acts above mentioned are invalid for the reason that under the provisions thereof power and authority is delegated to the Department of Public Instruction to determine and prescribe what Acts shall or shall not constitute a crime under the laws of the Territory of Hawaii punishable by fine and imprisonment [43] and to determine what

acts shall or shall not constitute a violation of the said Act 30 and the amendments thereof.

XX.

That plaintiffs are advised, and therefore aver, that the defendants above named are by law expressly charged with the duty of enforcing the terms and provisions of said Act 30 of the laws of 1920, as amended by said Act 171 of the laws of 1923 and as further amended by said Act 152 of the laws of 1925, and are vested with power and charged with the duty of prosecuting criminally for the offenses denounced therein as provided by said Acts.

XXI.

That plaintiffs verily believe and allege that unless the enforcement of said invalid and unconstitutional statute is restrained, the defendants will prevent plaintiffs from conducting the said schools belonging to and conducted by these plaintiffs and thereby deprive said plaintiffs of their right to engage freely in a legal, proper and wholesome vocation, business and enterprise as authorized by law, and will deprive the parents of the children attending the schools of plaintiffs of the right to have their children taught the language of their ancestors.

XXII.

That if said plaintiffs should be compelled to comply with the terms and provisions of said Act 30 of the Session Laws of 1920, as amended, and the same should be enforced against them, their valuable property would be depreciated, their staff of skilled and experienced teachers would be disorganized, all to their great and irreparable injury, and to the

great and irreparable injury of said plaintiffs, the teachers employed in [44] teaching said schools, and the parents of children attending said schools, and said damage and injury would be incapable of being admeasured and adjudicated in an action at law; and plaintiffs further allege that if plaintiffs are prevented from the free use, in connection with the conduct of their schools, of the aforesaid property, or if the officers, employees or teachers of plaintiffs are arrested or prosecuted, or otherwise harassed by legal proceedings for alleged violation of the provisions of said Act 30 of the Laws of 1920, as amended, such interference, arrests, prosecutions, or other proceedings would immediately involve them in a multiplicity of suits and legal proceedings and would, long before any judgment or decision could be had in such suits and proceedings, compel them to cease the conduct of said schools to their great damage and irreparable injury.

XXIII.

That plaintiffs further allege that unless restrained by this Honorable Court, the said defendants intend to and will enforce against plaintiffs, their officers, agents, servants, employees and teachers, the various pains, penalties, and forfeitures provided for in said Act 30 of the Session Laws of 1920, as amended, and intend to and will commence and prosecute the various prosecutions, proceedings and suits purported to be authorized or required; and that such action on the part of the defendants will necessarily and inevitably involve the plaintiffs, their officers, agents, servants, em-

ployees and teachers in a multiplicity of legal proceedings, and involve and threaten plaintiffs with the arrest and dispersion of their officers and their staff of skilled, experienced and trained teachers, or force them to quit the employ of said [45] plaintiffs in order to avoid prosecution, possible punishment and other harassment under cover of legal proceedings, and threaten and involve the destruction of the business of conducting said schools, or to the irreparable damage of said plaintiffs and that all and singular the damages resulting from said acts and proceedings would be incapable of admeasurement and adjudication at law.

XXIV.

That plaintiffs are without adequate remedy at law in the premises and only in a suit of this nature and by the injunctive process of this Court can they be fully protected in the enjoyment of their property and rights as aforesaid; the granting of the injunctive process as hereafter prayed would prevent a multiplicity of suits and prosecutions, and the questions herein involved can be adequately determined only in a suit of this nature.

IN CONSIDERATION WHEREOF, PLAINTIFFS PRAY:

1. That a subpoena issue out of this Honorable Court citing the said defendants and each of them to appear and answer this, their bill of complaint, answer under oath being hereby expressly waived.

2. That said defendants and each of them, their deputies, assistants and subordinates, and each and every one of them be enjoined and restrained from

in any manner enforcing or attempting to enforce or causing to be enforced against plaintiffs, their officers, agents, servants, employees and teachers, or any of them, any of the pains, penalties and forfeitures provided in and by said statute (Exhibit "A") as amended and from arresting or prosecuting or causing to be arrested and/or prosecuted the plaintiffs, their officers, [46] agents, servants, employees and teachers, or any of them, for or on account of any alleged violation by them of the terms and provisions of said statutes, and from in any manner and to any extent, interfering with the property, business and affairs of plaintiffs for any alleged violation of said statutes and/or said Rules and Regulations.

Plaintiffs further pray that they be granted a temporary injunction pending the final hearing and disposition of this cause whereby the said defendants, their deputies, assistants and each and every one of them be enjoined and restrained as heretofore prayed.

Plaintiffs further pray that they be granted a temporary restraining order pending the final hearing and disposition of this cause, whereby the said defendants, their deputies, assistants and subordinates, and each and every one of them, be enjoined and restrained as hereinbefore prayed.

And plaintiffs further pray that they have such other and further relief as to the Court may seem just and equitable in the premises.

Dated at Honolulu, this 13th day of June, A. D. 1925.

LIGHTFOOT & LIGHTFOOT.
By (S.) J. LIGHTFOOT,
(S.) J. B. POINDEXTER,
Attorneys for Plaintiffs. [47]

United States of America,
Territory of Hawaii,—ss.

Now comes T. Iwanaga, and being first duly sworn, on oath deposes and says: That he is named as one of the plaintiffs in the foregoing bill of complaint; that he has read the foregoing bill and knows the contents thereof; that he knows that the said bill is true except as to the matters and things therein stated upon information and belief and as to all such matters and things he verily believes it to be true.

(S.) T. IWANAGA.

Subscribed and sworn to before me this 13th day of June, 1925.

[Seal] (S.) GLADYS K. BENT,
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1925. [48]

EXHIBIT "A."

Laws Relating to Foreign Language Schools, Being Act 30 of the Session Laws of 1920, as Amended by Act 171 of the Session Laws of 1923 and by Act 152 of the Session Laws of 1925.

Sec. 390. DEFINITION OF TERMS "FOREIGN LANGUAGE SCHOOL" AND "DEPART-

MENT." The term "foreign language school," as used in this chapter shall be construed to mean any school which is conducted in any language other than the English language or Hawaiian language, except Sabbath schools. All subdivisions and activities under the direction, management or supervision of any foreign language school,—whatever language may be used in such subdivisions and/or activities,—shall be subject to the provisions of this chapter. The word "department" shall mean the department of public instruction of the Territory of Hawaii. (Session Laws of 1920, Act 30, Section 1; amended by Session Laws of 1923, Act 171, Section 1.)

Sec. 391. PERMITS, FEES. No foreign language school shall be conducted in the Territory unless under a written permit therefor from the department of public instruction nor unless the fee therefor shall have been paid as hereinafter provided. Nor shall such permit be issued unless such fee shall have been paid. Such permit shall be kept exposed in a prominent place at such school so as to be readily seen and read by visitors thereat.

For the purposes of this chapter the school year shall be deemed to begin on September 1 of each year and to end on August 31 of the following year. After May 10, 1925, on or before the first day on which any foreign language school shall be conducted in any school year or unexpired part thereof, there shall be paid to the department for or in respect of conducting such school during such school year or unexpired part thereof a fee, the amount of

which shall be computed as nearly as may be, at the rate of one dollar ($1.00) per pupil, on the estimated average attendance of pupils at such school during the period during which such school was conducted in the next preceding school year or, if such school shall not have been conducted during any part of such preceding school year, then at the same rate on the estimated expected average attendance during the school year or unexpired part thereof in question, in which latter case the amount shall be adjusted to conform to the estimated average attendance during such year or part thereof by an addition to or subtraction from the fee payable for the next following school year. The amount of such fee shall be estimated and determined by the department from such information as it may have and shall be payable by any person, persons or corporation conducting or participating in conducting such school. All officers, all teachers, and all members of any committee or governing board, of any such school and, in case such school is conducted by or for a corporation or a voluntary association or other group of persons, all members of associates or such corporation, association or group, shall be deemed to be participants in conducting such school. [49] Payment heretofore made for any school for the school year beginning September 1, 1924, or any part thereof of the fee which was provided for in this section before the passage of this amendment shall be deemed to be in full satisfaction of the fee required hereunder for such school for such school year or the unexpired part thereof.

In case any such school shall be conducted at any time without such fee having been paid for conducting the same, the Territory may recover such fee in a civil action against any person, persons or corporation who or which so conducted or participated in so conducting such school, and for that purpose if such school is conducted, or if its conducting is participated in, by a corporation or a voluntary association or other group of persons, such action may be brought against such corporation or association or group in its corporation or association or common name, with or without joining any or all individual defendants who may be liable for such fee, and, in a case of such association or group, process may be served on any officer or teacher, or any member of a committee or governing board, or on any member or associate, of such school, association or group, and any judgment recovered against the corporation or association or group as such may be enforced against the property of the corporation or the joint property of the members or associates of such association or group, as the case may be, and against the individual property of any of the officers, teachers, members of any committee or governing board, or members or associates of such school, corporation, association or group, who shall have been served with process or who shall have appeared in the action, in the same manner and to the same extent as if all had been named as defendants. The civil and penal remedies under this chapter shall be concurrent and not exclu-

sive of each other. No injunction shall issue from, nor shall any suit be maintained in, any court for the purpose of restraining the determination or collection of any such fee or the prosecution of any penal proceeding for conducting or participating in conducting any such school without such fee having been paid; but any payor of any such fee who desires to contest the validity thereof may do so under the provisions of Section 1444, for which purpose the department shall be deemed a public accountant within the meaning of that section and Section 1436.

On September 1, 1923, and annually thereafter, all permits, in order to be valid, must be renewed and shall, unless previously forfeited, be renewed by the department on the payment of a fee determined in the same manner as above specified; PROVIDED, that the department shall not be required to renew a permit for the conducting of any foreign language school in the conducting of which there has been a violation of the terms or provisions of this chapter. All of said fees collected by the said department shall be paid over to the treasurer of the Territory of Hawaii, and the moneys so paid are hereby appropriated to the department of public instruction to be expended in enforcing and carrying out the provisions of this chapter. If at any time the funds at the disposal of the department from fees previously collected, or from royalties, commissions or other moneys received in connection with the publication or sale of foreign language school

text books, shall make it [50] possible fully and effectively to carry out the provisions of this chapter with the permit fees payable by the schools based on a lower rate than one dollar ($1.00) per pupil, the department is authorized to make such a reduction in that rate as it may deem reasonable and expedient.

Every person conducting a foreign language school shall, not later than June 15 of each year, file with the department on forms prescribed or furnished by it, a sworn list of all pupils in attendance at said school during the current school year, showing the name, sex, parents, or guardians, place of birth and residence of each child. (Session Laws of 1920, Act 30, Section 2; amended by Session Laws of 1923, Act 171, Section 2 and Session Laws of 1925, Act 152, Section 1.)

Sec. 392. PERMIT TO TEACH. No person shall teach in a foreign language school unless and until he shall have first applied to and obtained a permit so to do from the department, and this shall also be construed to include persons exercising or performing administrative powers at any school. (Session Laws of 1920, Act 30, Section 3.)

Sec. 393. QUALIFICATIONS OF TEACHERS. No permit to teach in a foreign language school shall be granted unless and until the department is satisfied that the applicant for the same is possessed of the ideals of democracy; knowledge of American history and institutions, and

knows how to read, write and speak the English language.

It is hereby declared that the object of this chapter is to fully and effectively regulate the conducting of foreign language schools and the teaching of foreign languages, that the Americanism of the pupils may be promoted; and the department is hereby directed to carry the provisions of this chapter into effect in accordance with the spirit of this declaration. (Session Laws of 1920, Act 30, Section 4; amended by Session Laws of 1923, Act 171, Section 3.)

Sec. 394. PLEDGES. Before issuing a permit to conduct foreign language school or to teach in such school the department shall require the applicant for such permit to sign a pledge that the applicant will, if granted a permit to conduct or teach in such a school, abide by and observe the terms of this law and the regulations and orders of the department and will, to the best of his ability, so direct the minds and studies of pupils in said school as will tend to make them good and loyal American citizens and will not instruct or permit said pupils to receive instruction in said school in any way inconsistent therewith. (Session Laws of 1920, Act 30, Section 5.)

Sec. 395. SESSIONS OF SCHOOLS; HOURS OF ATTENDANCE. No foreign language school shall be conducted in the morning before the school hours of the public school or during the hours while the public schools are in session. Nor shall any pupil attend a foreign language school for

more than one hour each day nor exceeding six hours in any one week, nor exceeding thirty-eight weeks in any school year. [51]

PROVIDED, however, that the department may, in its discretion, with the approval of the governor, modify the terms of this section if it deems it can do so consistently with the declared object of this chapter. (Session Laws of 1920, Act 30, Section 6.)

Sec. 396. REGULATIONS. The department shall have full power from time to time to prescribe, by regulations, the subjects and courses of study of all foreign language schools, and the entrance and attendance *pe*requisites or qualifications of education, age, school attainment, demonstrated mental capacity, health and otherwise, and the text books to be used in any foreign language school.

Until otherwise provided by the department, the following regulations shall be in effect:

From the present up to September 1, 1923, every pupil shall have first satisfactorily completed the American public school first grade, or a course equivalent thereto, before attending, or being allowed to further attend, any foreign language school.

Beginning September 1, 1923, and thereafter, every pupil shall have first satisfactorily completed the American public school first and second grades, or courses equivalent thereto, before attending or being allowed to further attend, any foreign language school.

Beginning September 1, 1923, and thereafter, for grades one, two and three; and beginning September 1, 1924, and thereafter, for grades four and above; all new text books used in elementary foreign language schools shall be based upon the principle that the pupil's normal medium of expression is English and shall contain, as far as practicable, English equivalents for foreign words and idioms.

The department is hereby authorized to prepare or cause to be prepared or procure or arrange for procuring suitable text books for the teaching of foreign languages in the foreign language schools and to enter into an agreement or agreements for the publishing and sale of the same. All royalties, commissions and money received by or on behalf of the department in connection with the publication or sale of such text-books shall be paid over to the treasurer of the Territory and are hereby appropriated to the department to be expended for the purposes of this chapter. In every foreign language school no subject of study shall be taught, nor course of study followed, nor entrance nor attendance qualification required, nor text-books used, other than as prescribed or permitted by the department; PROVIDED, however, that the regulations set forth in this section shall be effective until superseded in part, or in whole, by others made by the department. (Session Laws of 1920, Act 30, Section 7; amended by Session Laws of 1923, Act 171, Section 4.) [52]

Sec. 397. INSPECTORS AND AGENTS. The department shall have power to appoint one or more inspectors of foreign language schools and to pay the salaries and necessary expenses thereof; such inspectors and other duly authorized agents of the department shall have the right freely to visit said foreign language schools and to inspect the buildings, equipment, records and teaching thereof and the text-books used therein.

If the department shall at any time become satisfied that any holder of a permit to conduct a foreign language school or to teach therein does not possess the qualifications herein required, or shall have violated or failed to observe any of the provisions of this chapter, or of the regulations or orders of the department, the department may then and thereupon revoke the permit theretofore granted and the same shall thereupon be and become null and void. (Session Laws of 1920, Act 30, Section 8; amended by Session Laws of 1923, Act 171, Section 5.)

Sec. 398. PENALTIES. Any person who shall conduct or participate in conducting a foreign language school, or who shall teach in a foreign language school, contrary to the provisions of this chapter, or who shall violate or participate in violating any of the provisions thereof or of the regulations or orders of the department, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed twenty-five dollars ($25.00). Each day's violation of this chapter or of any of the

provisions thereof shall be deemed a separate offense. (Session Laws of 1920, Act 30, Section 9; amended by Session Laws 1925, Act 152, Section 2.)

Sec. 399. INVALIDITY OF PART OF CHAPTER; EFFECT. If any section or part of this chapter be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the chapter as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid. (Session Laws of 1923, Act 171, Section 6.) [53]

EXHIBIT "B."

BY AUTHORITY.

On and after September 1, 1925, and until further notice, the following regulations shall be in effect:

I. ATTENDANCE.

Those Foreign Language Schools, whose textbooks and course of study are approved by the Department of Public Instruction, may admit to any grade any pupil who is in regular attendance at any Public School of the Territory of Hawaii or any approved private school.

Nothing in the foregoing shall be taken to forbid the attendance of pupils who have completed the eighth grade of the Territorial public schools or its equivalents, or who are over fourteen years of age.

II. COURSE OF STUDY AND TEXT-BOOKS.

1. FOR JAPANESE SCHOOLS—The Depart-

ment approves a primary course of two years and an elementary course of six years.

Those schools which desire to do so may also conduct a high school course of two or more years for pupils who have satisfactorily completed the elementary course.

For the above schools, the Department approves the following text-books:

(a) For the first primary grade, a well illustrated primer in kata kana to be prepared before said date under the supervision of the Department, based as far as possible on the vocabulary taught in the first grade of the American Public School and containing as far as practicable English and Japanese versions of each lesson. This book is designed especially to enable pupils to use correctly the simpler forms of the language. [54]

(b) For the second primary grade, a primer to be prepared before said date under the supervision of the Department using the hiragana, and so far as practicable giving English equivalents of new words and idioms. In addition to reading and conversation, especial attention is to be paid in the second grade to practice in writing the kana.

(c) For the elementary course, grades I to VI, the use of the corresponding books of the Hawaii Language School readers is approved.

It is recommended that an increasing amount of time be devoted to Japanese Composition, and to writing the characters from dictation, the object being to ensure a ready recognition of the char-

acters, not only in the familiar content of the readers, but wherever seen.

(d) For the high school course, no text-books are prescribed for the present but an increased amount of composition work is suggested. Letter-writing and translation of easy English into Japanese should begin with the first year of the high school course. Turkington's "My Country" is suggested as suitable material for this purpose.

By the end of the second year of the high school course, a reading knowledge of not less than two thousand Chinese characters should be attained.

Adopted June 1, 1925, by the Commissioners of Public Instruction.

(Signed) W. E. GIVENS,
Superintendent of Public Instruction, Territory of Hawaii.

Approved:

[Seal] (Signed) W. R. FARRINGTON,
Governor of Hawaii. [55]

The President of the United States of America,
To Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, GREETING:

SUBPOENA.

YOU ARE HEREBY COMMANDED to be and appear before the undersigned Judge of the Dis-

trict Court of the United States of America for the District of Hawaii, at his courtroom in Honolulu, within twenty days after the service hereof upon you, to answer a bill of complaint exhibited against you in such court by T. Tokushige et al., and to do and receive what the said Court shall have considered in this behalf; and this you are not to omit under penalty of Five Thousand Dollars.

WITNESS, the Honorable J. T. DeBOLT, this 13th day of June, 1925.

[Seal] (Sgd.) WM. L. ROSA,
Clerk.

By ————————,
Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12, RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED STATES.

YOU ARE HEREBY REQUIRED to enter your appearance in the above suit on or before twenty days after service hereof, excluding this day, at the clerk's office in said court, pursuant to said bill, otherwise the said bill will be taken *pro confesso.*

(Sgd.) WM. L. ROSA,
Clerk. [56]

United States Marshal's Office.

MARSHAL'S RETURN.

The within plaintiffs' bill of complaint, temporary restraining order, and subpoena was received by me on the 13th day of June, A. D. 1925, and is returned executed this 15th day of June, A. D. 1925

upon Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, by exhibiting to each of them the original plaintiffs' bill of complaint, temporary restraining order, and subpoena, and by handing to and leaving with each of them a certified copy of plaintiffs' bill of complaint, temporary restraining order, and subpoena.

(Sgd.) OSCAR P. COX,
United States Marshal.

Dated at Honolulu, T. H., this 15th day of June, A. D. 1925. [57]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Temporary Restraining Order. Attest: A true copy [Seal] (Sgd.) Wm. L. Rosa, Clerk, United States District Court, Territory and District of Hawaii. By ————, Deputy. Lightfoot & Lightfoot and J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, T. H., Attorneys for Plaintiffs. [58]

TEMPORARY RESTRAINING ORDER.

To Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, GREETING:

The said plaintiffs having filed their bill of complaint in the above-entitled suit praying for a temporary restraining order against you and each of you requiring you and each of you to refrain from certain acts hereinafter more particularly set forth, and the Honorable J. T. DeBolt, Judge of said Court, after consideration of said bill of complaint, having granted said prayer in and by his order of this day,

NOW, THEREFORE, you, the said defendants, Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, your deputies, assistants and subordinates, and each and every one of them are hereby strictly commanded until the further order of this Court from in any manner enforcing or attempting to enforce or causing to be enforced against the plaintiffs, their officers, agents, servants, employees and teachers or any of them, any of the pains, penalties and forfeitures provided in and by that certain statute enacted by the Legislature of

the Territory of Hawaii at the Special Session thereof in the year 1920 and designated as Act 30 (S. B. 32) and [63] duly approved on the 24th day of November, 1920, and which is entitled "An Act Relating to the Foreign Language Schools and Teachers Thereof," as amended by the Acts of 1923 and 1925.

And you, the said defendants, and each of you, your deputies, assistants, and subordinates and each and every one of you, until the further order of this Court be and you are hereby enjoined and restrained from arresting or prosecuting or causing to be arrested and/or prosecuted, the plaintiffs, their officers, agents, servants, employees and teachers or any of them, for or on account of any alleged violation by them or any of them of the terms and provisions of said statutes, and from in any manner and to any extent interfering with the property, business and affairs of plaintiffs for any alleged violation of said statutes.

WITNESS the Honorable J. T. DeBolt, Judge of the United States District Court in and for the District and Territory of Hawaii, this 13th day of June, A. D. 1925.

[Seal] (Sgd.) J. T. DeBOLT,
Judge, United States District Court in and for the District and Territory of Hawaii. [64]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278.

T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Motion to Dissolve or Modify Restraining Order. Filed June 17, 1925, at 2 o'clock and 35 minutes P. M. Wm. L. Rosa, Clerk. By (S.) Wm. F. Thompson, Deputy Clerk. William B. Lymer, Attorney General, The Capitol, Frear, Prosser, Anderson & Marx, 507 Stangenwald Building, Attorneys for Respondents. [65]

MOTION TO DISSOLVE OR MODIFY RESTRAINING ORDER.

Come now the respondents in the above-entitled cause and jointly and severally move this Honorable Court to dissolve or modify, as hereinafter more particularly set forth, the temporary restraining order issued in said cause on the 13th, and served on said respondents on the 15th day of June, 1925, upon the following grounds:

I.

That the issuance of said restraining order in the manner and form and under the conditions or lack of conditions upon which the same was issued was and is not authorized by any law of the United States but was and is contrary to the provisions of the laws of the United States.

II.

That the issuance of said restraining order is not authorized by Section 266 of the Judicial Code of the United States (36 Stat. L. 1162, as amended by 37 Stat. L. 1013), for the reasons, among others, that the statutes of the Territory of Hawaii in question mentioned in the petition herein, are not

[66] statutes of a state within the meaning of said Section 266 and that no irreparable loss or damage is shown by the petitioners herein in their said petition or by affidavit or otherwise such as would justify the issuance of said restraining order.

III.

That contrary to the provisions of Section 17 of the Act of the Congress of the United States of October 15, 1914, Chapter 323 (38 Stat. L. 737), said restraining order was granted without notice to the respondents herein or any of them and without its appearing clearly or at all from specific facts shown by affidavit or by the verified petition that immediate or irreparable injury, loss or damage would result to the petitioners herein before notice could be served and a hearing had thereon, and that said restraining order does not define the injury or state why it is irreparable or why the order was granted without notice, nor does it provide by its terms that it shall expire within such time after entry, not to exceed ten days, as the court or judge might fix, unless within the time so fixed the order should be extended for a like period for good cause shown and the reasons for such extension should be entered of record.

IV.

That said restraining order was issued without the giving of security by the applicants therefor, —contrary to the provisions of Section 18 of said last above mentioned Act.

V.

That said restraining order was issued without

compliance with the provisions of Section 19 of said last above mentioned Act, in that it does not set forth the reasons for the issuance of the same, is not specific in terms and does not describe in reasonable detail and not by reference to the bill of complaint or other document, the act or acts sought to be restrained. [67]

VI.

That said restraining order was issued without such showing in said petition or by affidavit or otherwise of immediate and irreparable injury, loss or damage as would justify the issuance thereof under any of the statutes of the United States above mentioned or otherwise.

VII.

That the petitioners are guilty of such laches in the institution of this suit and in applying for an injunction against the enforcement of said statutes of the Territory of Hawaii as to preclude them from being entitled to the issuance of such restraining order, even if they would otherwise be entitled to the same.

VIII.

That said petition is insufficient in law by reason of its failure to show that the petitioners or any of them are entitled to bring or maintain the same in such manner and form as the same has been brought.

IX.

That no sufficient grounds are shown in or by said petition or otherwise to justify this court as a court of equity in the issuance of such restraining order.

X.

That the petitioners have plain, adequate and complete remedies at law for the enforcement or protection of their rights, if any, in case said statutes or any of the provisions thereof are unconstitutional or invalid.

XI.

That no sufficient grounds or facts are set forth in said petition to show that the petitioners or any of them are or is or would be but for the prevention of a court of equity by a restraining order or otherwise likely to be or in danger of [67½] being prosecuted under the provisions or any of them of the said statutes of the Territory of Hawaii or that said provisions or any of them are likely to be or to be attempted to be enforced against the petitioners or any of them.

XII.

That said petition fails to show that any of said petitioners has not a permit or has not paid the fee provided for in said statutes or has failed to comply with any of the provisions of said statutes or cannot obtain such permit or cannot comply with any or all of the provisions of said statutes.

XIII.

That, so far as appears from said petition, none of the petitioners are entitled in or by these proceedings to question the constitutionality or validity of said statutes of the Territory of Hawaii or of any of the provisions thereof.

XIV.

That the invalidity or unconstitutionality of a

statute is not of itself or alone a ground of equity jurisdiction, and that a court of equity has no jurisdiction to restrain or enjoin the enforcement of a statute merely on the ground of its invalidity or unconstitutionality.

XV.

That said statutes of the Territory of Hawaii and said Rules and Regulations of the Department of Public Instruction are constitutional and valid in all respects.

XVI.

That a court of equity is without jurisdiction to restrain or enjoin the prosecution of criminal proceedings except under special circumstances and that no such special circumstances are shown by the petition as would justify the issuance of a restraining order or injunction against the prosecution of criminal proceedings [68] under said statutes of the Territory of Hawaii or any of the provisions thereof.

XVII.

That said petition does not show that this is a case in which a court of equity could take or exercise jurisdiction on the ground of preventing a multiplicity of suits or actions.

XVIII.

That none of the petitioners can properly bring or maintain said petition on behalf of any of the teachers employed in the schools mentioned in said petition; that none of said petitioners can bring or maintain said petition on behalf of any of the parents of children attending said schools or any of

them; that none of said petitioners can bring or maintain said petition on behalf of any other Japanese Language Schools or the owners or members thereof.

XIX.

That said petition fails to show that any of the teachers of the petitioners' schools or any of them has not a permit of the kind mentioned in Section 393 of Revised Laws of Hawaii, 1925, mentioned in said petition or that any of the teachers, if having no such permit, cannot obtain such permit or, if any of said teachers have not or cannot obtain such permit, that said petitioners or any of them cannot employ in sufficient numbers and of sufficient qualifications for their purposes teachers who have such permits.

XX.

That said petition fails to show that the teachers or any of them of said schools or any of them are or is or would be but for the prevention by a court of equity by a restraining order or otherwise likely to be or in danger of being prosecuted under [69] the provisions or any of them of the said statutes of the Territory of Hawaii or that said provisions or any of them are likely to be or attempted to be enforced against said teachers or any of them.

XXI.

That cases are pending in the courts of the Territory of Hawaii for the determination of the validity and constitutionality of Act 30 of the Special Session Laws of 1920 as amended by Act 171 of the

Session Laws of 1923 of the Territory, referred to in said petition, and Act 36 of said Special Session Laws, not referred to in said petition.

This motion is based on the record herein and the affidavits of the respondent William B. Lymer, Attorney General of the Territory of Hawaii, and of Henry B. Schwartz, inspector or supervisor of the Foreign Language Schools under the Department of Public Instruction of the Territory of Hawaii, which affidavits are hereto attached and made part hereof.

Wherefore these respondents move this Honorable Court to dissolve said temporary restraining order, or, in case the Court should find that the same should not be dissolved *in toto,* to modify it to the extent to which the Court may find that the same should not be made to apply to the provisions or any of them of said statutes of the Territory of Hawaii or to the respondents or their subordinates or any of them or their acts or actions thereunder.

Dated at Honolulu, June 17, 1925.

(S.) WILLIAM B. LYMER,
Attorney General.

(S.) FREAR, PROSSER, ANDERSON & MARX,
Attorneys for Respondents.

Due service of a copy of the within motion this day admitted.

Dated, June 17, 1925.

LIGHTFOOT & LIGHTFOOT,
(S.) J. B. P.
J. B. POINDEXTER,
Attys. for Plaintiffs. [70]

AFFIDAVIT OF WILLIAM B. LYMER.

Territory of Hawaii,
City and County of Honolulu,—ss.

William B. Lymer, being first duly sworn, deposes and says:

That he is the Attorney General of the Territory of Hawaii and one of the respondents in the above-entitled cause.

That, as this affiant is informed and believes, although Act 30 of the Laws of the Special Session of the Legislature of 1920 of the Territory of Hawaii, mentioned in the petition in the above-entitled cause, was approved on November 24, 1920, and took effect on July 1, 1921, and continued in force thereafter unamended until the amendment thereof of May 2, 1923, by Act 171 of the Session Laws of 1923, all or practically all of the foreign language schools and the members and teachers thereof, including the petitioners in the above-entitled cause, observed and complied with the provisions of said Act until its amendment aforesaid; that no prosecutions or legal proceedings were instituted for the enforcement of any such

provisions and no suit [71] was instituted by any of said schools, members or teachers to test the validity or constitutionality of any of said provisions until the Department of Public Instruction made certain regulations, which were afterwards embodied in said Act 30 by said Amendatory Act 171 and were substantially the same as the third, fourth and fifth paragraphs of Section 396 of the Revised Laws of Hawaii, 1925, whereupon one of said schools, to wit, the Palama Japanese Language School and certain members thereof, instituted a suit in equity in the Circuit Court of the First Circuit of the Territory of Hawaii, on or about December 28, 1922, to enjoin the enforcement of said Act 30 and said regulations, and eight or so other Japanese Language Schools thereafter intervened and joined as petitioners in said suit; that, the Circuit Judge who tried the same having held that said Act 30 and also said regulations corresponding to the fifth paragraph of said Section 396 were constitutional and valid but that the Department of Public Instruction was without authority to make said other regulations corresponding to the third and fourth paragraphs of said Section 396, cross-appeals were taken to the Supreme Court of the Territory but were recently discontinued without prejudice.

That after said Act 30 was amended as aforesaid by said Act 171 on May 2, 1923, some sixteen Japanese Language Schools instituted a suit in equity in the Circuit Court of the First Circuit of

the Territory of Hawaii, on May 9, 1923, to enjoin the enforcement of the provisions of said Act 30 as amended by said Act 171 and thereafter from time to time other Japanese Language Schools intervened and joined as petitioners in said suit and some such schools withdrew as petitioners therefrom, the number of petitioner schools therein at present being about eighty-six; that a preliminary injunction was issued in such suit *ex parte* forbidding the respondents therein, the Attorney [72] General and Superintendent of Public Instruction of the Territory, from enforcing the provisions of said Act 30 as so amended, and said suit is still pending in said court and said preliminary injunction is still in force; that all but a few of the petitioning schools therein are petitioners herein and that all but a few of the petitioners herein are petitioners therein.

That no prosecutions or legal proceedings have at any time been instituted under or for the enforcement of any of the provisions of said Act 30 or of said Act 30 as amended by said Act 171 or as further amended by Act 152 of the Session Laws of 1925.

That in July, 1923, the Territory instituted prosecutions in the District Court of Honolulu under Act 36 of the Laws of said Special Session of 1920 against four teachers, to wit, three in the Palama Japanese Language School and one in the Kalihi Japanese Language School, for teaching in said schools respectively without the certificate provided for in said Act 36; that all the defendants therein, after demanding trial by jury, and plead-

ing to the jurisdiction, and demurring, were tried and convicted in said District Court and took appeals to the Circuit Court,—in one case on a point of law, in one case for trial by jury and in two cases waiving trial by jury; that in the first of said cases, the point of law (whether the defendant had a right to a trial by jury in the first instance) having been decided adversely to the appellant by the Supreme Court of the Territory of Hawaii, the judgment of the District Court was affirmed by the Circuit Court; that in another of said cases the defendant was tried and convicted in the Circuit Court and said case is now pending in the Supreme Court of the Territory of Hawaii upon a writ of error sued out by the defendant therein for the purpose of determining the validity and constitutionality of said Act 36; that the remaining two cases are still pending in the Circuit Court. [73]

That shortly after the institution of said prosecutions under Act 36, in July, 1923, said Palama and Kalihi Japanese Language Schools instituted a suit in equity in the Circuit Court of the First Circuit of the Territory of Hawaii to enjoin enforcement of the provisions of said Act 36 but, although the petitioners therein prayed for a preliminary injunction, the Circuit Judge having jurisdiction of the case decided after a hearing that said Act 36 was constitutional and valid and also that said schools could not bring or maintain said suit on behalf of the teachers in said schools and denied the application for such preliminary injunction.

That this deponent early in the month of May, 1925, informed counsel for the petitioners that he would co-operate with them in obtaining as speedily as possible a decision of the Supreme Court of the Territory on the validity of said Act 152, whether upon payment of the fee required by said Act and a suit by the payer thereof to recover the same or by a submission on agreed facts under the provisions of Sections 2513–2514 of said Revised Laws.

And further deponent sayeth not.

Dated at Honolulu, T. H., June 17, 1925.

(S.) WILLIAM B. LYMER.

Subscribed and sworn to before me this 17th day of June, 1925.

[Seal] (S.) RACHEL O'SULLIVAN,
Notary Public, First Judicial Circuit, Territory of Hawaii. [74]

AFFIDAVIT OF HENRY B. SCHWARTZ.

Territory of Hawaii,
City and County of Honolulu,—ss.

Henry B. Schwartz, being first duly sworn, deposes and says:

That he is the Territorial Supervisor of Foreign Language Schools under the Department of Public Instruction of the Territory of Hawaii.

That according to the latest information of the Department of Public Instruction and of this affiant there are now in the Territory of Hawaii 164 Foreign Language Schools, of which 10 are Korean, 10 are Chinese, and 142 are Japanese; that

of said schools all of the Korean, all of the Chinese and 58 of the Japanese have paid the fees for the current school year required by Act 30 of the Special Session Laws of 1920, as amended by Act 171 of the Special Session Laws of 1923, and as further amended by Act 152 of the Session Laws of 1925, Territory of Hawaii; that all of said Foreign Language Schools, including both those which have and those which have not paid such fees, have hitherto complied with some or all of the provisions of said laws, many complying with all of said provisions and others complying with some provisions and not with others.

That to the best of this affiant's information and belief [75] there are employed in said Foreign Language Schools approximately 400 teachers; that two kinds of licenses, certificates or permits have heretofore been issued and are now being issued under said Act 20 and under Act 36 of said Session Laws of 1920, for the purpose of authorizing persons to teach in the Foreign Language Schools, namely, basic or permanent certificates, which are issued to such teachers as have fully qualified, and conditional or temporary certificates, which are issued from year to year to such persons as have qualified to a certain extent but have not fully qualified; that at the present time there are outstanding for teachers of Foreign Language Schools 571 basic certificates and 38 conditional certificates, a total of 609, of which approximately 85% have been issued for teachers of Japanese Language Schools; that comparatively few applicants have

failed to obtain either basic or conditional teachers' certificates and that a considerable number who have not such certificates at the present time, some of whom have previously held conditional certificates and some of whom have not heretofore held any certificates, would now have certificates but for the fact that some of them did not apply to take the required examinations and that many of them, although they applied in 1923, did not appear and take the examinations, in many cases because, as this affiant is informed and believes, they were advised that it would be unnecessary for them to obtain such certificates in order to teach in the Foreign Language Schools.

That, according to the latest information of the Department of Public Instruction and of this affiant, with comparatively few exceptions all of the pupils of said Foreign Language Schools attend the public schools or equivalent private schools; that in said Foreign Language Schools only approximately 1.73% of the pupils are aliens and approximately 98.27% are citizens of the United States, and in the public schools of the Territory approximately [76] 2.4% of the pupils are aliens and approximately 97.6% are citizens of the United States; that the number of alien pupils in the Foreign Language Schools has diminished from year to year until in 1924 the total was 326, namely, 5 in the Korean, 70 in the Chinese, and 251 in the Japanese Language schools and in 76 of such schools all of the pupils were American citizens, namely, in 4 of the Chinese, 7 of the Korean and 65 of the Japanese

Language Schools; that the percentage of American pupils in the Foreign Language Schools is greatest in the lower grades and lowest in the higher grades, there being, for instance, 49 alien pupils in one Japanese High Schools.

Further deponent sayeth not.

Dated Honolulu, T. H. June 17, 1925.

(S.) HENRY B. SCHWARTZ,

Subscribed and sworn to before me this 17th day of June, 1925.

(S.) RACHEL O'SULLIVAN,

Notary Public, First Judicial Circuit, Territory of Hawaii. [77]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Notice of Presentation of Motion. Filed June 17, 1925 at 2 o'clock and 35 minutes P. M. Wm. L. Rosa, Clerk. By (S.) Wm. F. Thompson, Jr., Deputy Clerk. William B. Lymer, Attorney General, The Capitol, Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Stangenwald Bldg., Attorneys for Defendants. [78]

NOTICE OF PRESENTATION OF MOTION.

To Messrs. Lightfoot & Lightfoot and J. B. Poindexter, Attorneys for Plaintiffs in the Above-entitled Case.

Please take notice that the undersigned will present for hearing in the above-entitled court, Honorable John T. DeBolt presiding, at two-thirty o'clock Friday afternoon, June 19, 1925, the motion of the defendants in the above-entitled case to dissolve or modify the restraining order heretofore issued in said case, a copy of which motion is herewith served on you.

(S.) WILLIAM B. LYMER,
Attorney General.

(S.) FREAR, PROSSER, ANDERSON & MARX,
Attorneys for Defendants.

Dated at Honolulu, June 17, 1925. [79]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Motion for Allowance of Preliminary Injunction, Affidavit of T. Iwanaga, and Notice of Presentation of Motion. Filed June 23, 1925, at 11 o'clock and 30 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. Lightfoot & Lightfoot, and

J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, Attorneys for Plaintiffs.

Copy of the within motion, affidavit and notice is hereby acknowledged this 23 day of June, 1925.

FREAR, PROSSER, ANDERSON & MARX.

By (S.) W. F. FREAR,
Attorneys for Defendants. [80]

NOTICE OF PRESENTATION OF MOTION FOR ALLOWANCE OF PRELIMINARY INJUNCTION.

To the Honorable W. B. Lymer, and to Messrs. Frear, Prosser, Anderson & Marx, Attorneys for Said Defendants.

Please take notice that the undersigned will present for hearing in the above-entitled court, the Honorable John T. DeBolt presiding, on Wednesday, the 24th day of June, 1925, at 2 o'clock in the afternoon of said day, the motion of the plaintiffs in the above-entitled cause for a temporary injunction.

Dated at Honolulu, this 23d day of June, 1925.

LIGHTFOOT & LIGHTFOOT,
By (S.) J. LIGHTFOOT,
(S.) J. B. POINDEXTER,
Attorneys for Plaintiffs. [81]

MOTION FOR ALLOWANCE OF PRELIMINARY INJUNCTION.

Come now the plaintiffs in the above-entitled cause, by their attorneys, Lightfoot & Lightfoot and J. B. Poindexter, Esq., and move this Honorable Court that the temporary injunction, prayed for in the bill filed herein, be granted on the ground that unless the defendants in said cause are enjoined, as prayed for in said bill, the said plaintiffs will suffer irreparable and immediate harm and injury.

This motion is based on the record in said cause and on the affidavit of T. Iwanaga, hereto attached and made a part hereof and to which reference is hereby made.

Dated at Honolulu, this 23d day of June, 1925.

LIGHTFOOT & LIGHTFOOT,
By (S.) J. LIGHTFOOT,
(S.) J. B. POINDEXTER,
By J. LIGHTFOOT,
Attorneys for Plaintiffs. [82]

AFFIDAVIT OF T. IWANAGA IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION.

United States of America,
Territory of Hawaii,—ss.

Now comes T. Iwanaga and being first duly sworn on oath deposes and says:

That he is one of the plaintiffs in the above-entitled cause.

That there is not now pending in any Circuit Court of the Territory of Hawaii or in the Supreme Court of said Territory of Hawaii any suit or action for the purpose of determining the constitutionality or otherwise of Act 152 of the Session Laws of 1925 and the Rules and Regulations referred to in the bill filed herein.

That during the pendency of the suits to determine the constitutionality of Act 30 of the Session Laws of 1920 and Act 171 of the Session Laws of 1923, the then attorney general of the Territory of Hawaii, to wit: John Albert Matthewman, through the public press and otherwise, gave notice that all persons conducting Foreign Language Schools without compliance with the provisions of said Act 30 and said Act 171 as well as all teachers teaching in said schools would be prosecuted [83] for so conducting said schools and so teaching in said schools; that the property of said persons would be seized to pay the fines that would be imposed upon such persons and teachers and that such persons and teachers would be committed to jail to work out such fines in case they did not have sufficient property to pay the same.

That under said Act 152 of the Session Laws of 1925, it is provided that no foreign language school shall be conducted in the Territory unless under a written permit therefor from the Department of Public Instruction nor unless the fees therefor shall have been paid as provided in said Act, nor shall such permit be issued unless such fees shall have been paid. The said Act further provides

that on or before the first day on which any Foreign Language School shall be conducted, after May 10, 1925, the fees provided for in said Act shall be paid, said fee being computed as nearly as may be at the rate of one dollar per pupil at the estimated attendance of pupils at such school during the period during which such school was conducted in the next preceding year; that said Act further provides that all officers, all teachers and all members of any committee or governing board of any such school, and in case such school is conducted by or for a corporation or a voluntary association or other group of persons, all members or associates of such corporation, association or group, shall be deemed to be participants in conducting said school. The said Act further provides that if any such school shall be conducted at any time without such fee having been paid for conducting the same, the Territory may recover such fee in a civil action against any person, persons or corporation who or which so conducted and so participated in conducting such school, and for that purpose if such school is conducted or if it is conducting or is participated in by a corporation or a voluntary association or other group of persons, such action may be [84] brought against such corporation or association or group in its corporate or associate or common name with or without joining any or all individual defendants who may be liable for such fee and in case of such association or group process may be served on any officer or teacher or any member of a committee or

governing board or on any member or associate of such school, association or group and any judgment recovered against the corporation or association or group as such may be enforced against the property of the members, associates of such association or group, as the case may be, and against the individual property of any of the officers, teachers, members of any committee or governing board or members or associates of such school, corporation, association or group who shall have been served with process or who shall have appeared in the action in the same manner and to the same extent as if all had been named as defendants. That said Act further provides that the civil and penal remedies under this chapter shall be concurrent and not exclusive of the other;

That under the provisions of said Act 152 the fees referred to above would have to be repaid on or before the 1st day of September, 1925.

That the said schools and the members thereof were unwilling and unable to pay the said fee.

That affiant was informed by Mr. J. Lightfoot, one of the attorneys for plaintiffs, and upon such information alleges and avers, that in a conversation had with the Honorable William B. Lymer, one of the defendants above named, and then Attorney General of the Territory of Hawaii, that unless the said fees were paid in whole or in part before the said 10th day of May, 1925, he, the said Attorney General, would proceed against any foreign language school which had not paid said fees, criminally and civilly, as in said Act 152 provided.

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That upon the receipt of said information, all of the schools, the members of which are parties plaintiff herein, [85] were afraid that the said threats of prosecution and suits would be carried out against them and were unwilling to conduct their said schools in defiance of said Act 152, and thereupon all of said schools closed their doors and excused their pupils and teachers from attendance until relief could be had by the injunctive process of this Honorable Court; that unless the said defendants be enjoined from enforcing the provisions of said Act 30 of the Session Laws of 1920 as amended in 1923 and 1925, and unless such injunctive relief be immediately afforded, the scholars belonging to said schools will be scattered, the teachers will seek other occupation and the said schools and the members thereof will be utterly ruined.

That in said Act 30 of the Session Laws of 1920, as amended, it is provided as follows:

> "The term 'Foreign Language School' as used in this Chapter, shall be construed to mean any school which is conducted in any language other than the English language or Hawaiian language except Sabbath schools. All subdivisions or activities under the direction, management or supervision of any foreign language school, whatever language may be used in said division and or activities, shall be subject to the provisions of this chapter."

That under the said provision and under the rules and regulations referred to in said bill of

complaint, the foreign language schools named in said bill would be unable to conduct their kindergartens; that the elimination of said kindergarten grades of said schools would mean the absolute ruin of said schools by reason of the fact that the first grade of said schools is generally recruited from said kindergarten grade.

That it is provided in said Act that no person shall teach in a foreign language school or shall exercise or perform administrative powers at said school unless he shall have obtained a permit from the Department of Public Instruction so to do and [86] said Act further provides that no permit shall be granted unless and until the Department is satisfied that the applicant for the same is possessed of the ideals of democracy, knowledge of American history and institutions, and knows how to read, write and speak the English language.

That in the schools referred to in said bill, which are conducted for each grade for one hour for each school day, nothing contrary to American history and American institutions and principles of democracy is taught, the instruction being confined to the speaking, reading and writing of the Japanese language; that while the Department of Public Instruction, under the said Acts, must be satisfied that the said teachers and others can speak, read and write the English language, there is no provision that said teachers shall be proficient in the art of teaching the Japanese language for which they are employed and paid, and that the said provisions requiring a knowledeg of the English lan-

guage and of American institutions and principles of democracy have no value to the plaintiffs in this case or the schools of which they are members; that unless restrained by this Honorable Court, under the said Acts, the Department of Public Instruction will be able to deprive the said schools of teachers proficient in the Japanese language to the ruination of said schools.

That in said Acts and said Rules and Regulations, it is provided that the Department of Public Instruction is authorized to prepare text-books for use in the foreign language schools of the Territory; that affiant is informed and believes, and upon such information and belief alleges and avers that some text-books have been prepared by the said Department for use in the Japanese Language Schools and that said text-books were so filled with errors that it was impossible to use the same in any school and that unless restrained by this Honorable Court, the said Department will insist upon the said schools adopting the text-books [87] prepared and authorized by it, the use of which text-books so prepared by the Government and filled with errors as aforesaid, would tend to the immediate ruination of the said Japanese Language Schools.

That in said Acts, it is provided that before the said permit will be granted, the applicants for said permit must sign a pledge that the applicant will, if granted the permit, abide by and observe the terms of the said Acts and the Regulations and orders of the Department of Public Instruction; that if the said requirement of a pledge is insisted

upon by the said Department, it will be impossible for the said schools and the members thereof, to secure teachers for the said schools competent to teach the Japanese language and the said schools will be immediately ruined.

That in the schools represented by plaintiffs there are about twelve thousand four hundred pupils and said schools employ about one hundred ninety-two teachers; that said teachers are paid and said schools are maintained from voluntary contributions and from the fees of the children attending said schools; that the provisions of said Act 152 of the Session Laws of 1925 are so drastic that the parents of children will be afraid to pay tuition fees and other persons will be afraid to contribute to the funds of said schools lest they be subjected to the pains and penalties provided in said Act, and that, therefore, unless immediate relief is afforded by this Honorable Court, the said schools will be unable to pay the teachers' salaries and the expenses of conducting said schools and the property of plaintiffs in said schools will be utterly destroyed.

And further affiant saith not.

(S.) T. IWANAGA.

Subscribed and sworn to before me this 23d day of June, 1925.

[Seal] (S.) GLADYS K. BENT,
Notary Public, First Judicial Circuit, Territory of Hawaii. [88]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Defendants' Objection to Allowance of Preliminary Injunction. Filed July 7, 1925, at 9 o'clock and 00 Minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. William B. Lymer, Attorney General, The Capitol, Frear, Prosser, Anderson & Marx, 507 Stangenwald Building, W. F. Frear, Attorneys for Respondents. [89]

DEFENDANTS' OBJECTION TO ALLOWANCE OF PRELIMINARY INJUNCTION.

Come now the defendants in the above-entitled cause and jointly and severally object to the granting of the motion for allowance of preliminary injunction heretofore filed herein by or on behalf of the plaintiffs, upon the following, among other grounds:

I.

That no sufficient grounds appear which would justify this court as a court of equity in the issuance of such preliminary injunction.

II.

That the plaintiffs have plain, adequate and complete remedies at law for the enforcement or protection of their rights, if any, in case the statutes, rules and regulations or any of the provisions thereof in question are unconstitutional or invalid.

III.

That it does not appear that the plaintiffs or any

of them would suffer irreparable damage by the enforcement of [90] the provisions or any of them of said statutes or but for the issuance of a preliminary injunction herein.

IV.

That the invalidity or unconstitutionality of a statute is not of itself or alone a ground of equity jurisdiction, and that a court of equity has no jurisdiction to restrain or enjoin the enforcement of a statute merely on the ground of its invalidity or unconstitutionality.

V.

That said statutes of the Territory of Hawaii and said Rules and Regulations of the Department of Public Instruction are constitutional and valid in all respects.

VI.

That a court of equity is without jurisdiction to restrain or enjoin the prosecution of criminal proceedings except under special circumstances and that no such special circumstances are shown by the bill or affidavit or otherwise as would justify the issuance of a preliminary injunction against the prosecution of criminal proceedings under said statutes of the Territory of Hawaii or any of the provisions thereof.

VII.

That it does not appear that any direct injury or damage would result to the plaintiffs or any of them from the enforcement of the provisions of said statutes or any of them other than or apart

from judgments for the fees or sentences of fines for the violation of such provisions or any of them.

VIII.

That this is not a case in which a court of equity [91] may take or exercise jurisdiction on the ground of preventing a multiplicity of suits or actions.

IX.

That cases are pending in the courts of the Territory of Hawaii for the determination of the validity and constitutionality of Act 30 of the Special Session Laws of 1920 as amended by Act 171 of the Session Laws of 1923 of the Territory, referred to in this bill of complaint, and Act 36 of said Special Session Laws, not referred to in said bill.

X.

That, prior to the commencement of this suit, a preliminary injunction was issued *ex parte* by a Circuit Judge of the Territory of Hawaii in a suit in equity brought by the plaintiffs herein enjoining the Attorney General and the Superintendent of Public Instruction of the Territory of Hawaii from enforcing the provisions of Act 30 as amended by Act 171 mentioned in said bill, and that said preliminary injunction is still in force undissolved and unmodified.

XI.

That the plaintiffs are guilty of such delay and laches in the institution of this suit and in applying for an injunction against the enforcement of said statutes of the Territory of Hawaii as to preclude them from being entitled to the issuance of such

preliminary injunction, even if they would otherwise be entitled to the same.

XII.

That all of the plaintiff schools have for years complied and are still complying with some of the provisions of said statutes and others of the plaintiffs have complied and are complying with some of the other provisions of said statutes [92] and numerous others of the Foreign Language Schools are complying with all of the provisions of said statutes.

XIII.

That it does not appear that the plaintiffs or any of them are or is or would be but for the prevention of a court of equity by a preliminary injunction or otherwise likely to be or in danger of being sued or prosecuted under the provisions or any of them of the said statutes of the Territory of Hawaii or that said provisions or any of them are likely to be or to be attempted to be enforced against the plaintiffs or any of them, except the provisions as to said fees.

XIV.

That it does not appear that any of said plaintiffs has not a permit or has not paid the fee provided for in said statutes or has failed to comply with any of the provisions of said statutes or cannot obtain such permit or cannot comply with any or all of the provisions of said statutes.

XV.

That it does not appear that any of the plaintiffs are entitled in or by these proceedings to question

the constitutionality or validity of said statutes of the Territory of Hawaii or of any of the provisions thereof.

XVI.

That none of the plaintiffs can properly bring or maintain said bill on behalf of any of the teachers employed in the schools mentioned in said bill; that none of said plaintiffs can bring or maintain said bill on behalf of any of the parents of children attending said schools or any of them; that none of said plaintiffs can bring or maintain said bill on behalf of any other Japanese Language Schools or the owners or members thereof. [93]

XVII.

That it does not appear that any of the teachers of the plaintiffs' schools or any of them has not a permit of the kind mentioned in Section 393 of the Revised Laws of Hawaii, 1925, mentioned in said bill or that any of the teachers, if having no such permit, cannot obtain such permit or, if any of said teachers have not or cannot obtain such permit, that said plaintiffs or any of them cannot employ in sufficient numbers and of sufficient qualifications for their purpose teachers who have such permits.

XVIII.

That it does not appear that the teachers or administrative officers or any of them of said schools or of any of them are or is or would be but for the prevention by a court of equity by a preliminary injunction or otherwise likely to be or in danger of being prosecuted under the provisions or any of

them of the said statutes of the Territory of Hawaii or that said provisions or any of them are likely to be or attempted to be enforced against said teachers or any of them—except the provisions relating to fees.

This objection is based on the record in said cause and on the affidavits of William B. Lymer and Henry B. Schwartz which are hereto attached and hereby made a part hereof.

Dated at Honolulu this 7th day of July, 1925.

(S.) WILLIAM B. LYMER,
(S.) FREAR, PROSSER, ANDERSON & MARX,
W. F. FREAR,
Attorneys for Defendants. [94]

AFFIDAVIT OF WILLIAM B. LYMER.

Territory of Hawaii,
City and County of Honolulu,—ss.

William B. Lymer, being first duly sworn, deposes and says:

That he is the Attorney General of the Territory of Hawaii and one of the defendants in the above-entitled cause;

That, as this affiant is informed and believes, although Act 30 of the Laws of the Special Session of the Legislature of 1920 of the Territory of Hawaii, mentioned in the plaintiffs' bill in the above-entitled cause, was approved on November 24, 1920, and took effect on July 1, 1921, and continued in force thereafter unamended until the amendment thereof of May 2, 1923, by Act 171 of the Session

Laws of 1923, all or practically all of the Foreign Language Schools and the members and teachers thereof, including the petitioners in the above-entitled cause, observed and complied with the provisions of said Act until its amendment aforesaid;

That no prosecutions or legal proceedings were instituted [95] for the enforcement of any such provisions and no suit was instituted by any of said schools, members or teachers to test the validity or constitutionality or prevent the enforcement of any of said provisions until the Department of Public Instruction made certain regulations, which were afterwards embodied in said Act 30 by said amendatory Act 171 and were substantially the same as the third, fourth and fifth paragraphs of Section 396 of the Revised Laws of Hawaii, 1925, whereupon one of said schools, to wit, the Palama Japanese Language School and certain members thereof, instituted a suit in equity in the Circuit Court of the First Circuit of the Territory of Hawaii, on or about December 28, 1922, to enjoin the enforcement of said Act 30 and said regulations, and eight or so other Japanese Language Schools thereafter intervened and joined as petitioners in said suit; that the Circuit Judge who tried the same held that said Act 30 and also said regulations corresponding to the fifth paragraph of said Section 396 were constitutional and valid but that the Department of Public Instruction was without authority to make said other regulations corresponding to the third and fourth paragraphs of said Section 396; that thereupon cross-appeals were taken in

said case to the Superior Court of the Territory but were recently discontinued.

That after said Act 30 was amended as aforesaid by said Act 171 on May 2, 1923, some sixteen Japanese Language Schools instituted a suit in equity in the Circuit Court of the First Circuit of the Territory of Hawaii, on May 9, 1923, to enjoin the enforcement of the provisions of said Act 30 as amended by said Act 171 and thereafter from time to time other Japanese Language Schools intervened and joined as petitioners in said suit and some such schools withdrew as petitioners [96] therefrom, the number of petitioner schools therein at present being about eighty-six; that a preliminary injunction was issued in such suit *ex parte* forbidding the respondents therein, the Attorney General and Superintendent of Public Instruction of the Territory, from enforcing the provisions of said Act 30 as so amended, and said suit is still pending in said court and said preliminary injunction is still in force; that all or nearly all of the plaintiff schools therein are plaintiff schools herein and that all or nearly all of the plaintiff schools herein are plaintiff schools therein.

That no prosecution or legal proceedings, whether civil or criminal, have at any time been instituted under or for the enforcement of any of the provisions of said Act 30 or said Act 30 as amended by said Act 171 or as further amended by Act 152 of the Session Laws of 1925.

That in July, 1923, the Territory instituted prosecutions in the District Court of Honolulu by penal

summons (not arrests) under Act 36 of the Laws of said Special Session of 1920 against four teachers, to wit, three in the Palama Japanese Language School and one in the Kalihi Japanese School, for teaching in said schools respectively without the certificate provided for in said Act 36; that all the defendants therein, after successively demanding trial by jury and pleading to the jurisdiction and demurring, were tried and convicted in said District Court and took appeals to the Circuit Court,—in one case on a point of law, in one case for trial by jury and in two cases waiving trial by jury; that in the first of said cases, the point of law (whether the defendant had a right to a trial by jury in the first instance) having been decided adversely to the [97] appellant by the Supreme Court of the Territory of Hawaii on reserved questions, the judgment of the District Court was affirmed by the Circuit Court; that in another of said cases the defendant was tried and convicted in the Circuit Court and said case is now pending in the Supreme Court of the Territory of Hawaii upon a writ of error sued out by the defendant therein for the purpose of determining the validity and constitutionality of said Act 36; that the remaining two cases are still pending in the Circuit Court.

That shortly after the institution of said prosecutions under Act 36, in July, 1923, said Palama and Kalihi Japanese Language Schools instituted a suit in equity in the Circuit Court of the First Circuit of the Territory of Hawaii to enjoin enforcement of the provisions of said Act 36 but, although the

petitioners therein prayed for a preliminary injunction, the Circuit Judge having jurisdiction of the case decided after a hearing that said Act 36 was constitutional and valid and also that said schools could not bring or maintain said suit on behalf of the teachers in said schools and denied the application for such preliminary injunction; that thereafter said Judge reserved for the Supreme Court in said case the question whether the plaintiff schools could sue in their association names, they being unincorporated associations, and the Supreme Court upon submission of said question on briefs without argument held, on June 10, 1924, that said schools could not sue but that the petition or bill could be amended by substituting the names of the members of said associations for the names of the associations; that the plaintiffs in said case have taken no further proceedings therein.

That this deponent early in the month of May, 1925, [98] informed counsel, J. Lightfoot, Esq., for the plaintiffs that he would co-operate with him in obtaining as speedily as possible a decision by the Supreme Court of the Territory on the validity of said Act 152, whether upon payment of the fee required by said Act and a suit by the payer thereof to recover the same or by a submission on agreed facts under the provisions of Sections 2513–2514 of said Revised Laws and that he would permit as easy terms as possible for the payment of the fees in case any of the schools should find it difficult to pay the entire fee at once

That this affiant is uninformed as to what, if anything, John Albert Matthewman, formerly Attorney General of the Territory of Hawaii, said with reference to the enforcement of the provisions of said Acts 30 and 171 or how far he was correctly reported in the press, in so far as he was reported to have made statements on that subject, but this affiant says that said John Albert Matthewman is no longer Attorney General and that during his tenure of that office, which terminated on or about March 26, 1925, and before the enactment of said Act 152, neither he nor any other officer of the Territory ever instituted any civil or penal proceedings for the enforcement of either of said Acts 30 and 171, but did institute the four penal proceedings for the enforcement of Act 36 of the Special Session Laws of 1920 of the Territory of Hawaii, as above set forth herein, and although no injunction or restraining order has ever been issued against the enforcement of said Act 36 no other penal proceedings have been instituted thereunder and although a sentence, to wit, of Five Dollars, was imposed on the defendant by the Circuit Court in one of said penal proceedings [99] and no appeal was taken therefrom, no stops have been taken to enforce the payment of said fine in any way.

That this affiant intends to enforce the payment of the fees as provided in said Act 152; but that this affiant has not determined or given particular thought nor ever made any announcement as to what policy or course he will ultimately pursue in regard to the enforcement of the other provisions

of said Acts but he does say that he intends to take no steps towards any such enforcement so long as the preliminary injunction issued as hereinabove set forth by a Territorial Circuit Judge shall remain in force undissolved and unmodified and he further says that he intends to take no steps toward the enforcement of Sec. 3 of said Act 30 (R. L., Sec. 392) at least until the final determination of said case now pending in the Territorial Supreme Court and further that he sees no reason why he should ever enforce said Section so long as Section 1 of said Act 36 (R. L., Sec. 302) remains in force.

That Act 152 referred to in said affidavit specifically provides with reference to the fees thereby required to be paid that:

> "No injunction shall issue from, nor shall any suit be maintained in, any court for the purpose of restraining the determination of collection of any such fee or the prosecution of any penal proceeding for conducting or participating in conducting any such school without such fee having been paid; but any payor of any such fee who desires to contest the validity thereof may do so under the provisions of Section 1444, for which purpose the department shall be deemed a public accountant within the meaning of that section and Section 1436."

the said Sections 1444 and 1436 being the sections of those numbers of the Revised Laws of Hawaii, 1925.

That the fees required by said Act 152 of the Laws [100] of 1925 to be paid are the same or

substantially the same as the fees required to be paid by said Act 171 of the Laws of 1923,—the amendments made by said Act 152 consisting principally in the payment of such fees irrespective of whether a permit is sought or obtained or not and in making adequate provision for the remedies for the enforcement of the payment of such fees; and that if any of the schools or members thereof mentioned in the bill of complaint herein is now required to pay such fees in respect of the remainder of the current school year it is because they have not heretofore paid the same as they should have at the beginning of the current school year, as numerous other Japanese Language Schools as well as all the Chinese and Korean Language Schools did.

And further deponent saith not.

Dated at Honolulu, T. H., July 7th, 1925.

(S.) WILLIAM B. LYMER.

Subscribed and sworn to before me this 7th day of July, 1925.

[Seal] (S.) WM. F. THOMPSON, JR.,
Notary Public, First Judicial Circuit, Territory of Hawaii,

_____,
Deputy Clerk, United States District Court, Territory of Hawaii. [101]

AFFIDAVIT OF HENRY B. SCHWARTZ.

Territory of Hawaii,
City and County of Honolulu,—ss.

Henry B. Schwartz, being first duly sworn, deposes and says:

That he is the Territorial Supervisor of Foreign Language Schools under the Department of Public Instruction of the Territory of Hawaii.

That according to the official statistics of the Department of Public Instruction there are now in the Territory of Hawaii 164 Foreign Language Schools, of which 10 are Korean, 10 are Chinese, and 142 are Japanese; that of said schools all of the Korean, all of the Chinese and 58 of the Japanese have paid the fees for the current school year required by Act 30 of the Special Session Laws of 1920, as amended by Act 171 of the Session Laws of 1923 (Sections 390–399 of the Revised Laws of Hawaii, 1925), and as further amended by Act 152 of the Session Laws of 1925, of the Territory of Hawaii; that all [102] of said Foreign Language Schools, including both those which have and those which have not paid such fees, have hitherto complied with some or all of the provisions of said Laws, many complying with all of said provisions and others complying with some provisions and not with others.

That there are employed in all of said Foreign Language Schools approximately 400 teachers; that two kinds of licenses, certificates or permits have heretofore been issued and are now being issued under said Act 30 and under Act 36 of said Session Laws of 1920 (Secs. 302–305, Revised Laws of Hawaii, 1925), for the purpose of authorizing persons to teach in the Foreign Language Schools, namely, basic or permanent certificates, which are issued to such teachers as have fully qualified, and

conditional or temporary certificates, which are issued from year to year to such persons as have qualified to a certain extent but have not fully qualified; that at the present time there are outstanding for teachers of Foreign Language Schools 571 basic certificates and 38 conditional certificates, a total of 609, of which approximately 85% or upwards of 500 have been issued for teachers of Japanese Language Schools, as compared with a total of about 300 teachers alleged in the bill of complaint to be employed in said Japanese Language Schools; that comparatively few applicants have failed to obtain such certificates and that a considerable number who have not such certificates at the present time, some of whom have previously held conditional certificates and some of whom have not heretofore held any certificates, would not have certificates but for the fact that some of them did not apply to take the required examinations and that many of them, although they applied in 1923, did not [103] appear and take the examinations,—in many cases because, as this affiant is informed and believes, they were advised not to do so.

That with comparatively few exceptions all of the pupils of the said Foreign Language Schools attend the public schools of the Territory or equivalent private schools; that in said Foregn Language Schools only approximately 1.73% of the pupils are aliens and approximately 97.6% are citizens of the United States, while in the public schools of the Territory approximately 2.4% of the pupils are aliens and approximately 97.6% are citizens of the

United States; that the number of alien pupils in the Foreign Language Schools has diminished from year to year until in 1924 the total was 326, namely, 5 in the Korean, 70 in the Chinese, and 251 in the Japanese Language Schools and in 76 of such schools all of the pupils were American citizens, namely, in 4 of the Chinese, 7 of the Korean and 65 of the Japanese Language Schools; that the percentage of American pupils in the Foreign Language Schools is greatest in the lower grades and lowest in the higher grades, there being, for instance 49 alien pupils in one Japanese High School.

That the plaintiff schools and the members thereof, in so far as they have failed to pay the fees required by law, have so failed because they were unwilling and not because they were unable to pay the same; that 78 of the Foreign Language Schools, including 58 of the Japanese Language Schools, have paid such fees for the current School year; that said fees are at the rate of only $1 per pupil per year, but that, as this affiant believes, the average cost per patronizing family per year of the Japanese Foreign Language Schools is upwards of $25 per year, as shown by extensive study and [104] investigation of the same by this affiant with respect to a considerable number of such schools; that the realizations from said fees are appropriated by the Legislature for the purpose of carrying out the Foreign Language School laws; that the law provides that the Department of Public Instruction may reduce such fees when it appears that the same as so reduced will be sufficient

for such purpose, and that, while the expense of carrying out such laws has probably been greater per year heretofore in the early years of the administration of such laws than it will be hereafter, it will probably be less in the near future and even at the present time, if such fees should be paid by all of such schools, probably the amount thereof could be reduced at once or in the near future, and the attorney, J. Lightfoot, Esq., for the plaintiffs was so informed early in May, 1925, by the Superintendent of Public Instruction in the presence of this affiant; that at the same time the Attorney General informed said attorney for the plaintiffs that he would allow the payment of the fees in instalments in case any of the schools found it difficult to pay the same all at once and that he would co-operate in obtaining an early decision on the validity of the portions of the laws relating to fees whether in a suit to recover the same if paid under protest or by a submission on agreed facts to the Supreme Court of the Territory.

That, as this affiant is informed and believes, thus far in connection with the litigation instituted by or on behalf of the plaintiff schools for the prevention of the enforcement of the Foreign Language School laws, there has been collected and expended an amount greater than the amount which the plaintiff schools would have paid in fees if they had paid the same as required by law ever since the requirement of the payment of [105] said fees, that is, for the last two years. As foundation for such belief this affiant relies, among other things, on the

following statement translated from a statement published in the Japanese Language in the February 13, 1925, number of the "Hawaii Hochi," one of the Japanese Language newspapers which is supporting such litigation, the said statement showing such amount for the period February, 1923, to December 31, 1924; that this affiant is uninformed as to what additional amounts have been collected or expended for such purpose before or since said period but is informed that large additional amounts have been and are now being raised:

"The treasurer's report of the Shiso Kisei Kai (Society for prosecution of test case) from February, 1923, to December 31, 1924, is as follows:

RECEIPTS.

Fee for Test Case (from the various schools)	$25,414.01
Contribution (Taisho Printing Company)	35.00
Loan from Asano Chuya Bank	32.94
	$25,481.95

DISBURSEMENTS.

Attorneys' Fees	$19,000.00
Printing Expenses	468.29
Clerks' Salaries (For 23 months)	1,150.00
Stationery & Supplies	47.41
Fees for instituting test cases	745.75
Correspondence Expenses	120.35
Campaign Fees	950.00
Traveling and Miscellaneous Expenses	1,436.15

Equipment (Office Furniture)	64.00
Secret Service Money deposited at Bishop Bank	1,500.00
	$25,481.95

Respectfully submitted,
SOCIETY FOR PROSECUTING TEST CASE OF FOREIGN LANGUAGE SCHOOLS.
By EIJIRO NIEHIJIMA,
DAIZO KAWAMURA,
TOKUICHI TSUJI,
DENZO NAKAYAMA,
(Treasurers.)"

Approved by:
TOMIZO TANIGAWA,
ENZO HASEGAWA,
(Auditors.) [106]

That, in the opinion of this affiant from his intimate knowledge of the Foreign Language Schools as a whole and the situation with respect to the large number of such schools which have complied with the Foreign Language School laws, the scholars belonging to the plaintiff schools will not be scattered; the teachers thereof will not seek other occupations; nor the members of said schools be utterly or at all ruined—in case the enforcement of said laws and rules and regulations is not restrained.

That such of the plaintiff schools as conduct kindergartens would not be prevented from conducting the same by compliance with the said For-

eign Language School laws or the rules and regulations referred to in said affidavit; and, further, that the elimination of said kindergartens entirely would not mean the absolute ruin of said schools or materially affect the same; that a number of the Foreign Language Schools, including many of the plaintiff schools, conduct no kindergartens and that the number of pupils in the first grade of such Foreign Language Schools is in no way decreased thereby and that the entire public school system is conducted without kindergarten grades and without thereby diminishing the number of pupils entering their first grades.

That the requirement of the qualifications for teachers in the Foreign Language Schools, as set forth in said Acts is, in the opinion of this affiant, very important and advisable and, in the opinion of this affiant, it is not true that the Department of Public Instruction, unless restrained by this Honorable Court, will be able to deprive said schools of teachers proficient in the Japanese language or to the ruination or to the injury of said schools; that, as shown [107] above herein, many more teachers hold permits to teach in the Japanese Language Schools than there are positions to be filled and from the taking effect of said Act 30 on July 1, 1921, until December, 1922, nearly all of the teachers of the Foreign Language Schools received permits to teach in such schools and since then that has generally been true of the numerous schools that have undertaken to comply with said laws and this affiant believes to a large extent in the cases of the plaintiff

schools, and that a large portion of such teachers hold basic or permanent permits and others hold conditional or temporary permits and many others would hold the same but for the fact that they have refrained from taking the required examinations or applying for such permits;

That although the Department of Public Instruction has caused text-books to be prepared for use in the Foreign Language Schools of the Territory, the preparation of those for use in the Japanese Language Schools being prepared, under the supervision of this affiant, by a number of prominent and highly qualified teachers in such Japanese Language Schools, and although in the first edition of said text-books a number of errors were found, such books have been thoroughly revised and are now reasonably free from errors and are now in use in a very large number of the Japanese Language Schools, to the satisfaction of the teachers, parents and children, and have proved to be more valuable text-books than were formerly used in such school and than are used in the plaintiff schools and have greatly increased the interest of all in the teaching and studying of the Japanese language; that such text-books formerly used in such schools and still used mainly in the plaintiff schools were published in Japan and not only contain errors but [108] are pedagogically of inferior quality and are less suitable in their context matter for pupils who are American citizens; and that the statement regarding the Foreign Language Schools in this Territory set forth in pages 107–143 of "A Survey of

Education in Hawaii" made under the direction of the Commissioner of Education of the United States and published as "Bulletin, 1920, No. 16" at the Government Printing Office, Washington, D. C., in 1920, is substantially a correct statement, which statement is hereby incorporated herein by reference.

That instruction in said Japanese Language Schools is not and cannot be confined to the speaking, reading and writing of the Japanese language, but extends to many subjects and even in so far as it is intended to have for its object the speaking, reading and writing of said language, the teaching of that is and must be largely through the medium of stories whether of history or fiction and in other ways than the mere teaching of letters and words and sentences.

That the requirement of the pledge referred to in said Acts will not prevent the schools or the members thereof from securing teachers for such schools sufficient in number and competent to teach the Japanese language and will not ruin or injure said schools; that experience in the past has shown that the requirement of such pledge has not been prejuditial to either said schools or said teachers, nor has any applicant for a permit to teach ever objected to the making of such pledge or requested to be excused from making the same, and, as this affiant understands, the pledge requires only the observance of the provisions of said laws and rules and regulations which are required to be observed in any event whether the pledge is taken or not, and that the

[109] person making such pledge shall so direct the minds and studies of the pupils in said schools as will tend to make them good and loyal American citizens and will not instruct or permit said pupils to receive instruction in such schools in any way inconsistent therewith and that, as shown by the bill of complaint herein, the plaintiff schools claim that they are all complying with such requirement.

That, in the opinion of this affiant, the parents of children will not because of the provisions of said Act 152 be afraid to pay tuition fees nor will other persons be afraid to contribute to the funds of such schools and this affiant denies that said schools will, unless immediate relief is afforded by this Honorable Court, be unable to pay the teachers' salaries and the expenses of conducting said schools, and denies that the property of plaintiffs in said schools will be utterly or at all destroyed.

That, as this affiant is informed and believes, none of the plaintiff schools were in session from May 10, to June 14, 1925, that they opened on or about June 15, 1925, and continued in session for a brief period but have since all closed for the summer vacation.

And further affiant saith not.

(S.) HENRY B. SCHWARTZ.

Subscribed and sworn to before me this 6th day of July, 1925.

[Seal] (S.) B. N. KAHALEPUNA,
Clerk, Circuit Court, First Judicial Circuit, Territory of Hawaii. [110]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Affidavit of J. Lightfoot. Filed July 8, 1925, at 9 o'clock and 52 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. Lightfoot & Lightfoot and J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, Attorneys for Plaintiffs.

Service of a copy of the within affidavit is hereby acknowledged this 8th day of July, 1925.

FREAR, PROSSER, ANDERSON & MARX.

By (S.) W. F. FREAR,
Attorneys for Defendants. [111]

AFFIDAVIT OF J. LIGHTFOOT.

United States of America,
Territory of Hawaii,—ss.

Now comes J. Lightfoot and being first duly sworn, on oath, deposes and says: That he is one of the attorneys for plaintiffs in the above-entitled court and cause and files this affidavit in support of plaintiff's motion for preliminary injunction and in reply to portions of the affidavit of the Honorable William B. Lymer, Attorney General of the Territory of Hawaii, filed in said court and cause on the 7th day of July, 1925, in support of the defendants' objections to allowance of preliminary injunction.

That affiant was one of the attorneys of record in the various proceedings in equity filed in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, and one of the attorneys for the defendants in the criminal cases referred to in said affidavit.

That there are now pending in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, in equity relating to said Foreign Language Schools, two suits, to wit: Equity No. 2520 and Equity No. 2538.

That in the said suit numbered Equity 2520 the constitutionality of Act 30 of the Session Laws of 1920 as amended by Act [112] 171 of the Session Laws of 1923 is attacked.

That in said suit numbered Equity 2538, the constitutionality of Act 36 of the Session Laws of 1920 is attacked.

That in each of the said suits, the petitioners are certain unincorporated associations appearing by their members and those thereunto authorized on behalf of themselves and all persons similarly situated.

That the parties respondent in each of said cases are John Albert Matthewman, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii.

That the parties petitioner in said suits are not the same as in the suit now pending in this Honorable Court.

That in the said suit Equity No. 2538, a demurrer was filed and the Honorable Frank Andrade, Judge of said Circuit Court, then presiding in equity, reserved to the Supreme Court of the Territory of Hawaii, certain questions regarding the right of unincorporated associations to sue by their members, and the said Supreme Court on the 10th day of June, 1924 in an opinion filed on said date and reported in 27 Hawaiian Reports 830, decided that "in the absence of an enabling statute, an unincorporated association cannot sue or be sued in its common or associate name" and further that "The designation of an unincorporated association as petitioner is a procedural defect and not one of substance and the court upon proper application therefor should permit an amendment." That the said decision is hereby referred to and made a part of this affidavit.

That John Albert Matthewman is not now Attorney General of the Territory of Hawaii and was not such Attorney General [113] at the date of the institution of the present proceedings.

That no suit is pending in any Court other than this Honorable Court involving the constitutionality of Act 30 of the Session Laws of 1920 as amended by Act 171 of the Session Laws of 1923 and as further amended by Act 152 of the Session Laws of 1925.

And further affiant saith not.

(S.) J. LIGHTFOOT.

Subscribed and sworn to before me this 7th day of July, 1925.

[Seal] (S.) GLADYS K. BENT,
Notary Public, First Judicial Circuit, Territory of Hawaii. [114]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Plaintiff's Motion to Strike from the Record Certain Portions of the Affidavit of Henry B. Schwartz Filed in Support of Defendants' Objection to Allowance of Preliminary Injunction. Filed July 8th 1925, at 8 o'clock and 57 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. Lightfoot & Lightfoot, and J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, Attorneys for Plaintiffs.

Service of a copy of the within motion is hereby acknowledged this 8 day of July, 1925.

FREAR, PROSSER, ANDERSON & MARX.

By (S.) W. F. FREAR,
Attorneys for Defendants. [115]

PLAINTIFFS' MOTION TO STRIKE FROM THE RECORD CERTAIN PORTIONS OF THE AFFIDAVIT OF HENRY B. SCHWARTZ FILED IN SUPPORT OF DEFENDANTS' OBJECTION TO ALLOWANCE OF PRELIMINARY INJUNCTION.

Now come the plaintiffs above named, by their attorneys, Messrs. Lightfoot & Lightfoot and J. B. Poindexter, Esq., and move this Honorable Court for an order herein striking from the record in said court and cause certain portions of the affidavit of Henry B. Schwartz, which affidavit was filed on the 7th day of July, 1925, in support of defendants' objections to allowance of preliminary injunction, on the ground that said portions of said affidavit are redundant, incompetent, irrelevant, immaterial, scandalous and impertinent. The portion of said affidavit being as follows:

First. All that portion of said affidavit beginning on the 6th line of the first page thereof, and ending on the 5th line of the second page thereof.

Second. All that portion of said affidavit beginning on the 6th line of the second page thereof and ending on the 3d line of the third page thereof. [116]

Third. All that portion of said affidavit beginning on the 4th line of the third page thereof and ending on the 20th line of the third page thereof.

Fourth. All that portion of said affidavitt beginning on the 21st line of the third page thereof

and ending on the 23d line of the fourth page thereof.

Fifth. All that portion of the said affidavit beginning on the 25th line of the fourth page thereof and ending with the last line of the fifth page thereof.

Sixth. All that portion of said affidavit beginning on the first line and ending on the 9th line of the sixth page thereof.

Seventh. All that portion of said affidavit beginning on the 23d line of the sixth page thereof and ending on the 13th line of the seventh page thereof.

Eighth. All that portion of said affidavit beginning on the 14th line of the seventh page thereof and ending on the 9th line of the eighth page thereof.

Ninth. All that portion of said affidavit beginning on the 8th line and ending on the 16th line of the ninth page thereof.

This motion is based on the record in said Court and Cause.

Dated at Honolulu this 7th day of July, A. D. 1925.

T. TOKUSHIGE et al.,
Plaintiffs.
By LIGHTFOOT & LIGHTFOOT,
(S.) J. LIGHTFOOT,
By (S.) J. B. POINDEXTER,
Their Attorneys. [117]

In the District Court of the United States, in and for the District and Territory of Hawaii. In Equity. No. 278. Bill for an Injunction. Order T. Tokishige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Filed July 21, 1925, at 9 o'clock and 05 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. Lightfoot & Lightfoot and J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, Attorneys for Plaintiffs.

Service of a copy of the within order is hereby acknowledged, this 2 day of July, 1925.

FREAR, PROSSER, ANDERSON & MARX,

By ————————,

Attorneys for Defendants. [118]

ORDER ALLOWING MOTION TO STRIKE PORTIONS OF HENRY B. SCHWARTZ'S AFFIDAVIT, Etc.

This cause coming on to be heard this day upon the motion for a preliminary injunction filed by the plaintiffs, the objections thereto filed by the defendants and the motion of plaintiffs to strike certain portions of the affidavit of Henry B. Schwartz attached to said objections to the issuance of preliminary injunction, J. B. Poindexter, Esquire, and J. Lightfoot, Esquire, of the firm of Lightfoot & Lightfoot, appearing for plaintiffs, the Honorable William B. Lymer, Attorney General of the Territory of Hawaii, appearing in his own behalf and on behalf of the other defendants named

in said bill, Walter F. Frear, Esquire, of the firm of Frear, Prosser, Anderson & Marx appearing for all of said defendants, and the Court having heard counsel for the respective parties and considered all the matters involved.

IT IS HEREBY ORDERED,

First. That plaintiffs' motion to strike from the records certain portions of the affidavit of Henry B. Schwartz filed in support of defendants' objection to allowance of preliminary injunction, which motion was filed in said court and cause, be and the same is hereby allowed and the portions of said affidavit are stricken from the record in said cause. [119]

Second. The defendants' objections to allowance of preliminary injunction filed in said court and cause on the 6th day of July, 1925, be and the same are hereby overruled.

Third. The motion for allowance of preliminary injunction filed by said plaintiffs in said court and cause be and the same is hereby granted for the reason that it appears to the court that said defendants intend to enforce against said plaintiffs, the pains, penalties and forfeitures provided in said Act 30 of the Session Laws of Hawaii of 1920 as amended by Act 171 of the Session Laws of Hawaii of 1923 and as further amended by Act 152 of the Session Laws of Hawaii of 1925, and that by such enforcement pending the final determination of the matters and things set forth in the bill of complaint filed herein, the said plaintiffs will suffer irreparable injury.

AND IT IS HEREBY FURTHER ORDERED that until the further order of this Court, the said defendants, Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, their deputies, assistants and subordinates and each and every one of them, are hereby enjoined and restrained from requiring the plaintiffs, their agents, servants or teachers to secure permits to conduct Foreign Language Schools, as required by Act 30 of the Session Laws of Hawaii of 1920 as amended by the Act of 1923 and further amended by the Act of 1925, or any permit whatsoever; from requiring or attempting to require plaintiffs, their agents, servants or teachers to pay the fees referred to in said Acts or to pay any fee whatsoever for conducting Foreign Language [120] Schools; from requiring plaintiffs, their agents, servants or teachers to make the reports referred to in said Acts; from requiring plaintiffs, their agents, servants or teachers to give the pledges referred to in said Acts, or any pledge affecting their duties in reference to Foreign Language Schools; from requiring plaintiffs, their agents, servants or teachers to conform to any regulation or regulations prescribed by the Department of Public Instruction relating to the subjects and courses of study of the entrance and attendance prerequisites and the qualifications of education, age, school attainments, demonstrated mental capacity and otherwise of the

pupils attending said Foreign Language Schools and from requiring plaintiffs, their agents, servants or teachers to use the text-books prescribed by said Department.

AND said defendants are further enjoined, until the further order of this court, from any manner enforcing against plaintiffs, their agents, servants and teachers the pains, penalties and forfeitures referred to in said Acts and from in any manner arresting or prosecuting or causing to be arrested or prosecuted, by civil or criminal proceedings, the plaintiffs, their agents, servants or teachers, on account of any alleged violation by them or any of them of the terms and provisions of said Acts and from in any manner and to any extent interfering with the property, business and affairs of plaintiffs for any alleged violation of said Acts.

AND IT IS FURTHER ORDERED that said plaintiffs do file in this court a bond with good and sufficient sureties in the penal sum of Twelve Thousand Five Hundred Dollars ($12,500.00) in the form and upon the conditions of the bond this day approved by the Court. [121]

Done in open court, this 21 day of July, A. D. 1925.

(S.) J. T. DeBOLT,
Judge, United States District Court in and for the District and Territory of Hawaii. [122]

In the District Court of the United States in and for the District and Territory of Hawaii. In

Equity. No. 278. Bill for an Injunction. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Preliminary Injunction. Filed July 21, 1925, at 9 o'clock and 05 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. Lightfoot & Lightfoot and J. B. Poindexter, 8-9-9a-10 McIntyre Building, Honolulu, Attorneys for Plaintiffs. [123]

PRELIMINARY INJUNCTION.

The President of the United States of America:
To Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, GREETING:

The plaintiffs above named having filed their petition in the above-entitled suit praying for a preliminary injunction against you and each of you requiring you and each of you to refrain from certain acts hereinafter more particularly set forth and the said plaintiffs having filed in said court and cause their motion for a preliminary injunction, and the said defendants having filed therein their objections to the granting of such preliminary injunction and the plaintiffs having filed therein, their motion to strike certain portions of one of the affidavits attached to said objections, and the Honorable John T. DeBolt, Judge of the United States District Court in and for the District and Territory

of Hawaii, after hearing counsel for the respective parties and after consideration of said petition, motions and objections, having granted said prayer and said motions and overruling said objections in and by his order of this day,

NOW, THEREFORE, you, the said defendants, Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, your deputies, assistants and subordinates and each and every one of them, until the further order of this Court, are hereby enjoined and restrained from requiring the plaintiffs, their agents, servants and teachers to secure permits to conduct [128] Foreign Language Schools, as required by Act 30 of the Session Laws of Hawaii of 1920 as amended by the Act of 1923 and further amended by the Act of 1925, or any permit whatsoever; from requiring or attempting to require plaintiffs, their agents, servants or teachers to pay the fees referred to in said Acts or to pay any fee whatsoever for conducting foreign language schools; from requiring plaintiffs, their agent, servants or teachers to make the reports referred to in said Acts; from requiring plaintiffs, their agents, servants or teachers to give the pledges referred to in said Acts, or any pledge affecting their duties in reference to Foreign Language Schools; from requiring plaintiffs, their agents, servants or teachers to conform to any regulation or regulations prescribed by the Department of

Public Instruction relating to the subjects and courses of study or the entrance and attendance prerequisites and the qualifications of education, age, school attainments, demonstrated mental capacity and otherwise of the pupils attending said Foreign Language Schools and from requiring plaintiffs, their agents, servants or teachers to use the text-books prescribed by said Department.

AND said defendants are further enjoined, until the further order of this Court, from in any manner enforcing against plaintiffs, their agents servants and teachers the pains, penalties and forfeitures referred to in said Acts and from in any manner arresting or prosecuting or causing to be arrested or prosecuted, by civil or criminal proceedings, the plaintiffs, their agents, servants or teachers, on account of any alleged violation by them or any of them of the terms and provisions of said Acts and from in any manner and to any extent interfering with the property, business and affairs of plaintiffs for any alleged violation of said Acts. [129]

WITNESS the Honorable JOHN T. DeBOLT, Judge of the United States District Court in and for the District and Territory of Hawaii, at Honolulu, this 21st day of July, A. D. 1925.

By order of the Court:

[Seal] (S.) WM. L. ROSA.
Clerk, United States District Court.

Approved:

(S.) J. T. DeBOLT,
Judge. [130]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants. Preliminary Injunction Bond. Filed July 21, 1925, at 9 o'clock and 05 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. [131]

PRELIMINARY INJUNCTION BOND.

WHEREAS, the plaintiffs in the above-entitled cause in their bill of complaint filed therein, dated June 13, 1925, prayed, among other things, that they be granted a temporary or preliminary injunction, and by their motion, dated June 23, 1925, filed in said cause, moved that the injunction so prayed for in their said bill be granted; and

WHEREAS, the above-entitled court has now granted or is about to grant said prayer and said motion but only upon condition that the plaintiffs should furnish to the defendants a bond in the nature of this bond and has now issued or is about to issue such injunction and has approved this bond as made in conformity with said conditions; [132]

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That we, T. Iwanaga, one of the plaintiffs in the above-entitled cause, as principal, and the other persons whose names are here-

unto subscribed, as sureties, are held and firmly bound unto the above-named defendants, Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, and their respective successors in office, in the sum of Twelve Thousand Five Hundred Dollars ($12,500.00), good and lawful money of the United States, to be paid to the said above-named defendants and their respective successors in office, for which payment well and truly to be made we hereby bind ourselves and our respective heirs, executors and administrators, jointly and severally, firmly by these presents, subject, however, to the limitations hereinafter set forth as to the liability of said sureties respectively.

THE CONDITION of this obligation is such that if the said plaintiffs shall well and truly pay or cause to be paid all such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained by said temporary injunction; and if, in case said bill of complaint shall be dismissed or this cause shall be discontinued or by reason of the dissolution or modification of said preliminary injunction or otherwise the said defendants and/or their successors in office shall cease to be enjoined or restrained by said injunction from collecting or enforcing the payment of the fees or any of them hereinafter mentioned or from instituting or prosecuting penal proceedings against persons for con-

ducting [133] or participating in conducting the respective schools listed in the Schedule hereto attached, which is hereby made part hereof, without such fees having been paid for or in respect of conducting such schools respectively, the said plaintiffs shall pay or cause to be paid to the Department of Public Instruction of the Territory of Hawaii the fees listed in said Schedule, the same being the fees determined by said Department as payable by, under or pursuant to the terms of Section 391 of the Revised Laws of Hawaii, 1925, as amended by Act 152 of the Session Laws of Hawaii of 1925, for or in respect of conducting, during the school year, or the unexpired part thereof, beginning September 1, 1924, and ending August 31, 1925, the schools of which the said plaintiffs are in said bill alleged to be members, and shall in such case pay also the fees, as and when they shall be so determined, for or in respect of the conducting of said schools during the school year, or part thereof, beginning September 1, 1924, and ending August 31, 1926, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, and this obligation is subject to the following limitation hereinabove referred to, that, while said principal and said sureties shall be jointly and severally bound as to said costs and damages exclusive of said fees, said sureties shall be jointly and severally bound as to said fees only in and to the amounts set opposite their respective signatures below.

AND PROVIDED FURTHER, and this obligation is subject to the following limitation hereinabove referred to, that, in case said defendants and/or their respective successors shall so cease to be enjoined or restrained for any reason or reasons other than that the provisions of said Section 391 as amended [134] by said Act 152 purporting to require the payment of said fees or any of them are valid or constitutional, said fees or any of them thereupon be paid to said Department under protest and suit be brought to recover the same as provided in said Section 391 as so amended, in which case the condition of this bond shall be deemed to have been performed to the extent of any and all such payments so made under protest to the same effect as if the same had not been made under protest.

IN WITNESS WHEREOF, we have hereunto set our hands this 20th day of July, 1925.

(S.) T. IWANAGA,
Principal.

	Amounts for which sureties are respectively bound as to fees.
(S.) E. NISHIJIMA	$1,000
(S.) K. HANAOKA	$ 500
(S.) T. TANIGAWA	$ 500
(S.) S. YAMAGUCHI	$ 500
(S.) Y. MATSUNAGA	$ 500
(S.) K. IBARAKI	$ 500
(S.) N. AOKI	$ 500
(S.) N. FUKUDA	$ 500

(S.) K. OKIMURA ..... $ 500

[135]

(S.) J. WATANABE ..... $ 500
(S.) U. YAMANE $1,000
(S.) F. KOOCHI ..... $ 500
(S.) M. OSAKI ..... $ 500
(S.) K. KIMOTO ..... $ 500
(S.) M. SEKIGUCHI ..... $ 500
(S.) S. MIYAMOTO ..... $ 500
(S.) I. AOKI ..... $ 500
(S.) K. YOSHIMURA ..... $ 500
(S.) M. SORANAKA ..... $ 500
(S.) S. UYEDA ..... $ 500
(S.) T. ESUJI ..... $ 500
(S.) D. KAWAMURA $1,000
_____, ___
_____, ___

Sureties.

Approved.

(S.) J. T. DeBOLT,
Judge. [136]

United States of America,
Territory of Hawaii,—ss.

Each of the above-named sureties,—

E. Nishijima,
K. Hanaoka,
T. Tanigawa,
S. Yamaguchi,
Y. Matsunaga,
K. Ibaraki,
N. Aoki,
N. Fukuda,
K. Okimura,
J. Watanabe,
U. Yamane,
F. Koochi,
M. Osaki,
K. Kimoto,
M. Sekiguchi,
S. Miyamoto,

I. Aoki, S. Uyeda,
K. Yoshimura, T. Tsuji and
M. Soranaka, D. Kawamura,

being first duly sworn, deposes and says:

That he is one of the sureties on the foregoing bond and that he is worth in property subject to execution within the Territory of Hawaii, over and above all his debts and liabilities, at least the amount set opposite his signature to the foregoing bond.

(S.) E. NISHIJIMA, (S.) F. KOOCHI,
(S.) K. HANAOKA, (S.) M. OSAKI,
(S.) T. TANIGAWA, (S.) K. KIMOTO,
(S.) S. YAMAGUCHI, (S.) M. SEKIGUCHI,
(S.) Y. MATSUNAGA, (S.) S. MIYAMOTO,
(S.) K. IBARAKI, (S.) I. AOKI,
(S.) N. AOKI, (S.) K. YOSHIMURA,
(S.) N. FUKUDA, (S.) M. SORANAKA,
(S.) K. OKIMURA, (S.) S. UYEDA,
(S.) J. WATANABE, (S.) T. TSUJI,
(S.) U. YAMANE, (S.) D. KAWAMURA.

Severally subscribed and sworn to before me this 20th day of July, 1925, by each of the persons whose names are subscribed to the foregoing oath.

[Seal] (S.) GLADYS K. BENT,
Notary Public, First Judicial Circuit, Territory of Hawaii. [137]

SCHEDULE REFERRED TO IN FOREGOING BOND.

Name of School.	Amount of Fee.
Aiea Japanese Language School	$ 236
Chuo Gakuen	713

Ewa Shion Japanese Language School 101
Haleiwa Taisho Japanese Language School .. 229
Hawaii Girls' School 112
Heeia Japanese Language School 103
Kahaluu Japanese Language School 61
Kailua Japanese Language School 55
Kakaako Old Japanese Language School 117
Kalihi Japanese Language School 242
Manoa Japanese Language School 205
Moiliili Japanese Language School 611
Palama Gakuen 566
Palama Japanese Language School 674
Pearl City Japanese Language School 181
Punaluu Japanese Language School 21
Puuloa Japanese Language School 70
Toyo Gakuen 226
Wahiawa Gakuen 368
Waiahole Japanese Language School 12
Waialua Japanese Language School 170
Waikiki Japanese Language School 100
Hawaii Japanese High School 431
Fort Educational Home 461
Central Kona Japanese Language School 214
Hakalau Japanese Language School 114
[138]
Halawa Japanese Language School 53
Hilea Japanese Language School 25
Hilo Educational Home 259
Hilo Japanese High School 105
Hilo Practical School 112
Honokaa Japanese Language School 131
Honomakau Japanese Language School 49

Honomu Gakuen 94
Honuapo Japanese Language School 26
Hookena Japanese Language School 28
Kaapahu Japanese Language School 47
Kapoho Japanese Language School 42
Kapulena Japanese Language School 31
Kaumana Japanese Language School 80
Keanou Educational Home 43
Kohala Japanese Language School 68
Kukaiau Japanese Language School 37
Kurtistown Japanese Language School 92
Naalehu Japanese Language School 59
Napoopoo Japanese Language School 88
Ninole Japanese Language School 146
Niulii Japanese Language School 75
Olaa 9-Mile Gakuen 208
Onomea Japanese Language School 54
Ookala Japanese Language School 70
Paauilo Japanese Language School 107
Pahala Educational Home 82
Pahala Japanese Language School 65
Pahoa Japanese Language School 155
Papaaloa Japanese Language School 102
Papaikou Educational Home 111
Papaikou Japanese Language School 176
Piihonua Japanese Language School 54
[139]
Wailea Japanese Language School 65
Wainaku Kyoritsu Japanese Language School 96
Wainaku Jodo Mission Japanese Language School 117
Anahola Japanese Language School 40

Hanalei Japanese Language School	41
Kapaa Educational Home	111
Kapaa Nissin Japanese Language School....	51
Kealia Educational Home	77
Kekaha Japanese Language School	134
Kilauea Japanese Language School	64
Koloa Japanese Language School	131
Koolau Japanese Language School	34
Lawai Japanese Language School	58
Makaweli Japanese Language School	126
Makaweli Camp 2 Japanese Language School.	41
Mana Japanese Language School	Paid
Haiku Japanese Language School	202
Honokowai Japanese Language School	27
Kahului Japanese Language School	163
Kaupakalua Japanese Language School	59
Kula Japanese Language School	68
Lahaina Dowa Educational Home	226
Makawao Japanese Language School	82
Olowalu Japanese Language School	27
Peahi Japanese Language School	107
Wahikuli Japanese Language School	18
Waihee Japanese Language School	41
Waikapu Japanese Language School	61
Wailuku Educational Home	222

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In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al. Plaintiffs, vs. Wallace R. Far-

rington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruc[illegible]n of the Territory of Hawaii, Defendants. Defendants' Exceptions to Order and Preliminary Injunction. Filed July 21, 1925, at 2 o'clock and 45 minutes P. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. [141]

DEFENDANTS' EXCEPTIONS TO ORDER AND PRELIMINARY INJUNCTION.

Defendants' attorneys, having excepted orally in open court to the order and preliminary injunction hereinafter mentioned upon the making and issuance of the same and having stated at the same time that they would reduce such exceptions to writing and file the same, now and hereby except more formally and in writing to the order made by the Judge in the above-entitled cause dated and filed this day, and particularly to that part of said order wherein and whereby the said Judge allows plaintiff's motion to strike from the records certain portions of the affidavit of Henry B. Schwartz filed in support of defendants' objection to the allowance of the preliminary injunction and striking said portions from the record [142] in said cause; and also particularly to that part of said order wherein and whereby the said Judge overrules the defendants' objections to the allowance of the preliminary injunction, and also particularly to that part of said order wherein and whereby the said Judge grants

the plaintiffs' motion for the allowance of the preliminary injunction.

And the defendants' attorneys further hereby except to the allowance and issuance of the preliminary injunction dated this day and filed in said cause approved by the said Judge and signed by order of the Court by the clerk thereof.

And the defendants' attorneys hereby further give notice of their intention to appeal from said order and from the allowance and issuance of said preliminary injunction.

Dated at Honolulu, T. H., July 21, 1925.

(S.) MARGUERITE K. ASHFORD,
1st Deputy Attorney General.

(S.) FREAR, PROSSER, ANDERSON & MARX,
W. F. FREAR,
Attorneys for Respondents.

Due service of a copy of the within exceptions this day admitted.

Dated July 21, 1925.

(S.) LIGHTFOOT & LIGHTFOOT,
(S.) J. LIGHTFOOT,
Attorneys for Plaintiffs. [143]

T. Tokushige et al. vs. Wallace R. Farrington et al. Equity No. 278. Statement by Respondents. Filed July 29th, 1925, at 3 o'clock and 55 minutes P. M. Wm. L. Rosa, Clerk. By (Sgd.) Catherine E. Parks, Deputy Clerk. [144]

STATEMENT BY RESPONDENTS.

Mr. *FREAR.*—I would like to make a statement as to our position in this matter, to avoid any possible misunderstanding, and would like to have it taken down. The other day, opposing counsel handed us a form prepared by them of the proposed order granting the motion to strike portions of the affidavit of Dr. Schwartz, overruling our objections to the granting of a preliminary injunction, and granting the preliminary injunction, and also the form of the proposed preliminary injunction. The order did not purport to be made "*pro forma*" as your Honor expressed a desire that it should be. I called the attention of one of opposing counsel to this, and he said that he had had a talk with your Honor resulting in an understanding that "*pro forma*" should be omitted, but that your Honor would write a brief statement or opinion setting forth the arrangement. I was not present at the conversation, and do not know what was meant by "arrangement," and I may be needlessly concerned as to what may have taken place. But the thought occurred to me that perhaps they are trying to pave the way to make a contention in the Circuit Court of Appeals that the order is a consent order—in which case, of course, no appeal would lie from it.

When their motion for a preliminary injunction came on for hearing, opposing counsel pointed out that an appeal would lie under the statute from the order granting or refusing the preliminary injunction and that the losing side, whichever it was, would

appeal, and proposed that the argument be confined to the question of constitutionality, and that the rest of the argument be cut out. We pointed out that we could not safely do that, stating the reasons why, and suggested that if they wanted to cut out argument, they could cut it *all* out, provided, that the Court would deny the preliminary injunction, in [145] which case they could appeal, we, meanwhile, being at liberty to enforce the collection of the fees, or, if the Court should grant the preliminary injunction, it should do so only on condition that they give a bond covering, not only costs and damages as provided in the statute, but also specifically the payment of the fees.

We are not consenting to any order or decree. But we were willing to submit the matter without argument, that is, without further argument, for we have filed our objections to the granting of a preliminary injunction, and much of our argument on the motion to dissolve the temporary restraining order will apply to this matter also, provided we knew that the Court would not make any order that would jeopardize our rights. We cannot be put in the position of consenting to any order.

Mr. POINDEXTER.—We desire the bond to provide that, if the preliminary injunction is dissolved as to the fees on any other ground than the invalidity of the provision as to fees, we be permitted to pay the fees under protest and then sue to recover them back.

Mr. FREAR.—It seems that every time we get near to an agreement on the bond, they introduce

something else. This proposal was not made until after adjournment last time. Their proposal is a confession that they have an adequate remedy at law. The fees for the next year are coming due in September. This bond does not cover those. We would have to go out and sue for those. This preliminary injunction matter will not be settled in the Circuit Court of Appeals until after that. It would greatly jeopardize the interests of the Territory to have to postpone its collection of this year's fees until then, and then find that it might have to wait until the termination of suits in the Territorial Courts by the schools to recover the fees back. We have gone very far to accommodate them. We are having the burden of the appeal. We have consented that the bond be cut down to the fees of this year, provided the bond is absolute. The bond is small. We don't know what their sureties will be. If they want an injunction, and think they have a case, [146] they should be willing to stand by it. A number of weeks have been lost already. All this litigation is having a very disastrous effect upon the public morale. It seems to me that they ought to pay those fees, under protest, if they wish, but now they want to put us to all this expense and time and then say, "After all, we will pay this bond if you have a good case, ultimately in some other Court," and thus compel us to go all over it again. In our judgment, it seems to jeopardize the rights of the Territory. In such case we prefer to have further argument on the

expectation of finally convincing the Court that it should not grant a preliminary injunction.

We will, however, make this proposition as to the bond: that they include next year's fees, payable in September, as well as this year's fees, and in case it should be held that the provision as to the fees is valid, they then pay them all. But, in case the Court does not hold that the provision as to the fees is valid, then they may pay them under protest, and sue to get them back.

Dated: Honolulu, T. H., July 17, 1925. [147]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction, Equity No. 278. T. Tokushige et al., Plaintiffs-Appellees, vs. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants-Appellants. Petition for Appeal—Order Allowing Appeal. Filed July 27, —25, at 9 o'clock and 30 minutes A. M. (Sgd.) Wm. L. Rosa, Clerk. William B. Lymer, Attorney General of Hawaii, The Capitol, Honolulu, T. H. Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Stangenwald Building, Honolulu, T. H., Attorneys for Defendants-Appellants. [148]

PETITION FOR APPEAL—ORDER ALLOWING APPEAL.

The above-named defendants, Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, deeming themselves aggrieved by the order dated and entered July 21, 1925, allowing plaintiffs' motion to strike from the records certain portions of the affidavit of Henry B. Schwartz filed in support of defendants' objections to the allowance of a preliminary injunction and overruling the defendants' said objections and granting the plaintiffs' motion for the allowance of a preliminary injunction, and deeming themselves aggrieved also by the allowance and issuance of said preliminary injunction dated and filed on the same day, to all of which the defendants duly excepted, do hereby appeal from said order and from the allowance and issuance of said preliminary injunction to the United States Circuit Court of Appeals for the [149] Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith; and they pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and said allowance and issuance of said preliminary injunction were made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit, and that

said order may be reversed and said preliminary injunction dissolved.

Dated at Honolulu, T. H., July 27, 1925.

(Sgd.) WILLIAM B. LYMER,
Attorney General, Territory of Hawaii.
FREAR, PROSSER, ANDERSON & MARX,
By (Sgd.) W. F. FREAR,
Attorneys for Defendants-Appellants.

And now, to wit, on July 27, 1925, it is ordered that the appeal be and the same hereby is allowed as prayed for.

(Sgd.) J. T. DeBOLT,
District Judge. [150]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs-Appellees, vs. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants-Appellants. Assignment of Errors. Filed July 27, —25, at 9 o'clock and 30 minutes A. M. (Sgd.) Wm. L. Rosa, Clerk. William B. Lymer, Attorney General of Hawaii, The Capitol, Honolulu, T. H. Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Stangenwald

Building, Honolulu, T. H., Attorneys for Defendants-Appellants. [151]

ASSIGNMENT OF ERRORS.

Now come Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, defendants below, appellants, and make and file this their assignment of errors:

1. The District Judge erred in allowing the motion of plaintiffs below, appellees, to strike from the record, and in striking from the record, certain portions of the affidavit of Henry B. Schwartz attached to the defendants' objections to the issuance of a preliminary injunction, and so erred as to each portion of said affidavit specified in said motion and so struck out.

2. Said Judge erred in overruling the plaintiffs' objections to the allowance of a preliminary injunction, and so erred as to each of said objections.

3. Said Judge erred in granting the plaintiffs' prayer and motion for a preliminary injunction. [152]

4. Said Judge erred in allowing and causing to be issued said preliminary injunction.

5. Said Judge erred in holding that sufficient grounds appeared which would justify the Court as a court of equity in the granting or issuance of said preliminary injunction.

6. Said Judge erred in holding as a reason for the allowance and issuance of said preliminary injunction that the defendants intend to enforce against the plaintiffs the pains, penalties and forfeiture provided in the Acts mentioned in said preliminary injunction and that by such enforcement pending the final determination of the matters and things set forth in the bill of complaint the plaintiffs would suffer irreparable injury.

7. Said Judge erred in enjoining or causing to be enjoined by said preliminary injunction the defendants from requiring the plaintiffs, their agents, servants or teachers, to secure permits to conduct foreign language schools as provided in said Acts or any permit whatsoever.

8. Said Judge erred in so enjoining or causing to be enjoined the defendants from requiring or attempting to require the plaintiffs to pay the fees referred to in said Acts or to pay any fee whatsoever for conducting foreign language schools.

9. Said Judge erred in so enjoining or causing to be enjoined the defendants from requiring the plaintiffs to make the reports referred to in said Acts.

10. Said Judge erred in so enjoining or causing to be enjoined the defendants from requiring the plaintiffs, their agents, servants or teachers to give the pledges referred to in said Acts or any pledge affecting their duties in reference to Foreign Language Schools.

11. Said Judge erred in so enjoining or causing to be enjoined the defendants from requiring the

plaintiffs, their agents, [153] servants or teachers, to conform to any regulation or regulations prescribed by the Department of Public Instruction relating to the subjects and courses of study or the entrance prerequisites and the qualifications of education, age, school attainments, demonstrated mental capacity and otherwise of the pupils attending said Foreign Language Schools and from requiring the plaintiffs, their agents, servants or teachers to use the text-books prescribed by said Department.

12. Said Judge erred in so enjoining or causing to be enjoined the defendants from enforcing against the plaintiffs, their agents, servants or teachers, the pains, penalties and forfeitures referred to in said Acts and from arresting or prosecuting or causing to be arrested or prosecuted the plaintiffs, their agents, servants or teachers, on account of any alleged violation by them or any of them of the terms or provisions of said Acts and from interfering with the property, business and affairs of plaintiffs for any alleged violation of said Acts.

13. Said Judge erred in so enjoining or causing to be enjoined the defendants, from requiring or attempting to require the plaintiffs, their agents, servants, or teachers, to pay the fees referred to in said Acts or to pay any fee whatsoever for conducting Foreign Language Schools, notwithstanding that the plaintiffs, their agents, servants and teachers, had and have plain, adequate and complete remedies at law for the enforcement or pro-

tection of their rights, if any, in case the provisions of said Acts relating to said fees are unconstitutional or invalid, and in not holding that they had and have such plain, adequate and complete remedies at law.

14. Said Judge erred in so enjoining or causing to be enjoined the defendants from enforcing each of the other provisions of said Acts and said regulations, and from doing each of the other things, mentioned in said preliminary injunction, notwithstanding [154] that the plaintiffs had and have plain, adequate and complete remedies at law for the enforcement and protection of their rights, if any, in case the said other provisions of said Acts and said regulations or any of them are unconstitutional or invalid, and in not holding that they had and have such plain, adequate and complete remedies at law.

15. Said Judge erred in enjoining or causing to be enjoined the defendants by said preliminary injunction as set forth therein, notwithstanding that it did not appear that the plaintiffs or any of them would suffer irreparable damage by the enforcement of the provisions or any of them of said Acts or of said regulations but for the issuance of said preliminary injunction, and in not holding that there was no sufficient showing of danger of such irreparable damage.

16. Said Judge erred in so enjoining or causing to be enjoined the defendants, notwithstanding that the invalidity or unconstitutionality of a statute is not of itself or alone a ground of equity jurisdiction

and notwithstanding that a court of equity has no jurisdiction to restrain or enjoin the enforcement of a statute merely on the ground of its invalidity or unconstitutionality, and in not so holding as to the jurisdiction of a court of equity.

17. Said Judge erred in so enjoining or causing to be enjoined the plaintiffs, notwithstanding that said Acts and regulations and the several provisions thereof are constitutional and valid, and in not holding that the same are constitutional and valid as to each of said provisions.

18. Said Judge erred in so enjoining or causing to be enjoined the defendants, notwithstanding that a court of equity is without jurisdiction to restrain or enjoin the prosecution of criminal proceedings under the circumstances appearing in this case, and in not holding that he, sitting as a court of equity, was so without jurisdiction to restrain or enjoin the prosecution [155] of criminal proceedings under said Acts.

19. Said Judge erred in so enjoining or causing to be enjoined the defendants as to the provisions of said Acts other than Act 152 of the Laws of 1925, notwithstanding that there were and are pending in the courts of the Territory of Hawaii cases instituted and maintained by the plaintiffs or some of them for the determination of the validity and constitutionality thereof and of Act 36 of the Special Session Laws of 1920.

20. Said Judge erred in so enjoining or causing to be enjoined the defendants as to the provisions of said Acts other than said Act 152, notwithstand-

ing that a preliminary injunction was issued *ex parte* by a Circuit Judge of the Territory of Hawaii in a suit in equity brought by most of the plaintiffs herein and others enjoining the Attorney General and the Superintendent of Public Instruction of the Territory of Hawaii from enforcing the provisions of said Acts other than said Act 152 and notwithstanding that said preliminary injunction so issued by said Circuit Judge is still in force undissolved and unmodified.

21. Said Judge erred in so enjoining or causing to be enjoined the defendants as to the provisions of said Acts other than said Act 152, notwithstanding that the plaintiffs appeared to be guilty of such delay and laches in the institution of this suit and in applying for such preliminary injunction as to preclude them from being entitled to the issuance of such injunction as to such provisions, even if they would otherwise be entitled to the same, and in not holding that the plaintiffs were so guilty.

22. Said Judge erred in so enjoining or causing to be enjoined the defendants, notwithstanding that it did not appear that the defendants or any of them were entitled in or [156] by these proceedings to question the constitutionality or validity of said Acts or regulations or of any of the provisions thereof.

23. Said Judge erred in so enjoining or causing to be enjoined the defendants, notwithstanding that it did not appear that the plaintiffs or any of them would suffer any direct injury or damage, from the enforcement of the provisions of said Acts or regu-

lations, other than or apart from judgments for the fees or sentences of fines for the violation of such provisions and in not holding that no such other direct injury or damage would so be suffered by the plaintiffs from such enforcement.

24. Said Judge erred in so enjoining or causing to be enjoined the plaintiffs as to the teachers employed in the schools mentioned in the bill of complaint, notwithstanding that the plaintiffs cannot properly bring or maintain said bill on behalf of any of said teachers, and in not holding that the plaintiffs could not properly so bring or maintain said bill on behalf of such teachers.

25. Said Judge erred as a matter of sound judicial discretion in not refusing so to enjoin or cause to be enjoined the plaintiffs under all the circumstances of this case as shown by the record and papers filed herein.

Dated at Honolulu, T. H., July 27, 1925.

(Sgd.) WILLIAM B. LYMER,
Attorney General, Territory of Hawaii.
FREAR, PROSSER, ANDERSON & MARX,
By (Sgd.) W. F. FREAR,
Attorneys for Defendants-Appellants. [157]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs-Appellees, vs. Wallace R. Farrington, Governor of the Territory of

Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants-Appellants. Citation on Appeal. Filed July 27, —25, at 9 o'clock and 30 Minutes A. M. Wm. L. Rosa, Clerk. By ———, Deputy Clerk. William B. Lymer, Attorney General, The Capitol, Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Strangenwald Bldg., Attorneys for Defendants-Appellants. [158]

CITATION ON APPEAL.

The United States of America,—ss.

To T. Tokushige, K. Tanaka, S. Sasaki, Members of Aiea Japanese Language School, an Unincorporated Association, F. Koochi, M. Nishigaya, Members of Chuo Gakuen, an Unincorporated Association, T. Hashimoto, K. Kinoshita, T. Nakano, Members of Ewa Shion Japanese Language School, an Unincorporated Association, M. Okomoto, K. Sakai, T. Enomoto, Members of Haleiwa Taisho Japanese Language School, an Unincorporated Association, Y. Yoshimura, T. Hokushin, I. Aoki, Members of Hawaii Japanese Girls' School, an Unincorporated Association, K. Kimura, M. Sakai, S. Kiyohawa, Members of Heeia Japanese Language School, an Unincorporated Association, K. Kanemaru, C. Nakata, Z. Toyama, Members of Kahaluu Japanese Language School, an Unincorporated Association, Kwanichi Miyaji, Nisaku Iwasaki, S.

Hishinuma, Members of Kailua Japanese Language School, an Unincorporated Association, M. Soranaka, E. Sato, N. Fukuda, Members of Kakaako Japanese Language School, an Unincorporated Association, U. Yamane, T. Tanikawa, D. Nakayama, Members of Kalihi Japanese Language School, an Unincorporated Association, K. Okimura, J. Watanabe, A. Nakano, Members of Manoa Japanese Language School, an Unincorporated Association, Y. Kobayashi, T. Hirata, S. Yamaguchi, Members of Moiliili Japanese Language School, an Unincorporated Association, T. Tsuji, F. Sakuma, I. Dewa, Members of Palama Gakuen, an Unincorporated Association, S. Uyeda, D. Kawamura, S. Nakashima, Members of Palama Japanese Language School, an Unincorporated Association, W. Eufuji, O. Hamamoto, K. Nakagawa, Members of Pearl City Japanese Language School, an Unincorporated Association, N. Obara, J. Kaya, S. Toyota, Members of Punaluu Japanese Language School, an Unincorporated Association, T. Kanno, T. Maeda, Y. Nakamura, Members of Puuloa Japanese Language School, an Unincorporated [159] Association, T. Yamaraki, Y. Tanouye, N. Koge, Members of Toyo Gakuen, an Unincorporated Association, U. Uranaka, K. Tokumoto, T. Ito, Members of Wahiawa Gakuen, an Unincorporated Association, G. Ginda, H. Yamashiro, K. Kawamura, Members of Waiahole Japa-

nese Language School, an Unincorporated Association, H. Miura, U. Matsuo, M. Okamoto, Members of Waialua Japanese Language School, an Unincorporated Association, K. Ibaraki, T. Murakami, N. Aoki, Members of Waikiki Japanese Language School, an Unincorporated Association, C. Koya, K. Yoko- Members of Hawaii Japanese High School, an Unincorporated Association, M. Tasaka, T. Iwanaga, Members of Fort Educational Home, an Unincorporated Association, T. Ikdea, T. Watanabe, T. Toshiyuki, Members of Central Kona Japanese Language School, an Unincorporated Association, C. Koya, K. Yokoyama, T. Okaji, Members of Hakalau Japanese Language School, an Unincorporated Association, T. Takaki, T. Gouchi, F. Uyehana, Members of Halawa Japanese Language School, an Unincorporated Association, G. Suzuki, J. Maeda, S. Okinishi, Members of Hiilea Japanese Language School, an Unincorporated Association, B. Takeda, Y. Hata, I. Ikeda, Members of Hilo Educational Home, an Unincorporated Association, B. Takeda, Y. Hata, I. Ikeda, Members of Hilo Japanese High School, an Unincorporated Association, T. Hara, F. Kusumoto, I. Isono, Members of Hilo Practical School, an Unincorporated Association, T. Yonemoto, K. Irie, K. Inokoji, Members of Honokaa Japanese Language School, an Unincorporated Association, A. Nanbu, K. Kinoshita, K. Shikasho, Members of Honomakau Japanese

Language School, an Unincorporated Association, C. Miyakawa, M. Tankguchi, K. Tokumaru, Members of Honomu Gakuen, an Unincorporated Association, M. Nakano, Yamada, S. Sasaki, Members of Honuapo Japanese Language School, an Unincorporated Association, K. Sakamoto, T. Endo, T. Higishi, Members of Hookena Japanese Language School, an Unincorporated Association, K. Okamoto, N. Nakagawa, T. Tankguchi, Members of Kaapahu Japanese Language School, an Unincorporated Association, G. Higashi, K. Monma, K. Nitta, Members of Kapoho Japanese Language School, an Unincorporated Association, T. Yoshida, Y. Hamasaki, H. Iura, Members of Kapulena Japanese Language School, an Unincorporated Association, Y. Maneki, T. Tanouye, K. Fujita, Members of Kaumana Japanese Language School, an Unincorporated Association, K. Ikeda, Y. Nagata, Members of Keauhou Educational Home, an Unincorporated Association, S. Uesugi, C. Kamimura, R. Furusho, Members of Kohala Japanese Language School, an Unincorporated Association, B. Taguchi, Y. Endo, T. Sugahara, Members of Kukaiau Japanese Language School, an Unincorporated Association, O. Hiraki, K. Naraki, S. Ito, Members of Kurtistown Japanese Language School, an Unincorporated Association, T. Yamamoto, A. Komatsu, S. Takaki, Members of Naalehu Japanese Language School, an Unincorporated Association, T. Takahata, C. Inouye,

I. Ariyoshi, Members of Napoopoo Japanese Language School, an Unincorporated Association, M. Shigaki, T. Matsuda, R. Maeyama, Members of Ninole Japanese Language School, an Unincorporated Association, S. Hirashima, M. Tamura, I. Hoshida, Members of Niulii Japanese Language School, an Unincorporated Association, T. Oto, A. Akiyama, I. Kasai, Members of Olaa 9-Mile Gakuen, an Unincorporated Association, K. Yamada, T. Yanagisawa, A. Nakamura, Members of Onamea Japanese Language School, an Unincorporated Association, K. Yamamoto, D. Miyagawa, H. Ohara, Members of Ookala Japanese Language School, an Unincorporated Association, T. Miyasaki, T. Hishiyama, B. Higa, Members of Paauilo Japanese Language School, an Unincorporated Association, T. Koike, K. Maeda, U. Murakami, Members of Pahala Educational Home, an Unincorporated Association, T. Marumoto, D. Tominaga, S. Kitsuki, Members of Pahala Japanese Language School, an Unincorporated Association, [160] J. Ozaki, A. Miyabara, M. Hayashikawa, Members of Pahoa Japanese Language School, an Unincorporated Association, R. Tamamoto, R. Suzuki, H. Nagai, Members of Papaaloa Japanese Language School, an Unincorporated Association, T. Morigaki, K. Sakamoto, J. Ishida, Members of Papaikou Educational Home, an Unincorporated Association, I. Kurogawa, M. Hayakawa, S. Kikuchi, Members of Papaikou

Japanese Language School, an Unincorporated Association, S. Ogawa, R. Morimoto, K. Otochi, Members of Piihonua Japanese Language School, an Unincorporated Association, S. Yoshida, K. Hayashida, H. Miyamoto, Members of Wailea Japanese Language School, an Unincorporated Association, K. Orimoto, J. Ogata, D. Uamaguchi, Members of Wainaku Kyoritsu Japanese Language School, an Unincorporated Association, R. Shimotsu, I. Fujikawa, Y. Murai, Members of Wainaku Jodo Mission Japanese Language School, an Unincorporated Association, M. Fujimitsu, T. Nomura, R. Kamebayashi, Members of Anahola Japanese Language School, an Unincorporated Association, S. Miura, I. Nakatsuka, K. Yokota, Members of Hanalei Japanese Language School, an Unincorporated Association, K. Okimoto, J. Miura, J. S. Teraoka, Members of Kapaa Educational Home, an Unincorporated Association, G. Ogata, T. Yoshimura, K. Urabe, Members of Kapaa Nissin Japanese Language School, an Unincorporated Association, N. Miyasaki, K. Ogata, I. Ariizumi, Members of Kealia Educational Home, an Unincorporated Association, T. Shimatsu, S. Togioka, S. Yamashita, Members of Kekaha Japanese Language School, an Unincorporated Association, T. Yoshimoto, E. Saiki, M. Saiki, Members of Kilauea Japanese Language School, an Unincorporated Association, S. Muronaka, S. Ebata, S. Matsumoto, Members of

Koloa Japanese Language School, an Unincorporated Association, K. Okinaga, T. Yoshi, K. Noribe, Members of Koolau Japanese Language School, an Unincorporated Association, J. Mashita, M. Matsumura, M. Kunioka, Members of Lawai Japanese Language School, an Unincorporated Association, T. Ueda, M. Kawata, N. Akazawa, Members of Makaweli Japanese Language School, an Unincorporated Association, J. Matsui, S. Hagashi, N. Kawamura, Members of Makaweli Camp 2 Japanese Language School, an Unincorporated Association, K. Muranaka, G. Tokunaga, S. Oshiro, Members of Mana Japanese Language School, an Unincorporated Association, M. Tanaka, C. D. Akinori, S. Yoshimasu, Members of Haiku Japanese Language School, an Unincorporated Association, M. Hopiuchi, Y. Satsuma, M. Toma, Members of Honokowai Japanese Language School, an Unincorporated Association, T. Kurakake, K. Miho, H. Kinoshita, Members of Kahului Japanese Language School, an Unincorporated Association, U. Higa, T. Hanzawa, J. Izawa, Members of Kaupakalua Japanese Language School, an Unincorporated Association, I. Fujibayashi, K. Nagata, K. Okamoto, Members of Kula Japanese Language School, an Unincorporated Association, J. Murata, J. Sato, G. Masuda, Members of Lahaina Dowa Educational Home, an Unincorporated Association, I. Toyama, K. S. Matsui, K. Umemoto, Members of Makawao Japanese Language

School, an Unincorporated Association, S. Kawashima, M. Takahashi, S. Kurisu, Members of Olowalu Japanese Language School, an Unincorporated Association, S. Chikamori, S. Watanabe, Y. Fukuroku, Members of Peahi Japanese Language School, an Unincorporated Association, K. Watanabe, K. Takahama, S. Yamasaki, Members of Wahikuli Japanese Language School, an Unincorporated Association, M. Uno, H. Kaneshina, T. Hirai, Members of Waihee Japanese Language School, an Unincorporated Association, R. Sato, S. Furukawa, T. Sonoda, Members of Waikapu Japanese Language School, an Unincorporated Association, G. Kawahara, K. Yamamoto, Y. Yoshida, Members of Wailuku Educational Home, an Unincorporated Association, GREETING:

You and each of you are hereby cited and admonished to [161] be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, within thirty days from the date hereof, pursuant to an appeal filed by the above-named defendants in the clerk's office of the District Court of the United States for the District and Territory of Hawaii, in the above-entitled case, to show cause, if any there be, why the order and the allowance of the preliminary injunction in the said appeal mentioned should not be corrected, why said order should not be reversed, why said preliminary injunction should not be dissolved, and why

speedy justice should not be done to the parties on that behalf.

WITNESS the Honorable J. T. DeBOLT, Judge of the said District Court, this 27th day of July, in the year of our Lord one thousand nine hundred and twenty-five.

J. T. DeBOLT,
District Judge.

Service and receipt of copy of the foregoing citation is acknowledged this 27th day of July, 1925.

LIGHTFOOT & LIGHTFOOT,
WILLSON C. MOORE,
Attorneys for Plaintiffs-Appellees. [162]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs-Appellees, vs. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney-General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants-Appellants. Appeal Bond. Filed July 27, —25, at 9 o'clock and 30 minutes A. M. (Sgd.) Wm. L. Rosa, Clerk. William B. Lymer, Attorney General of Hawaii, The Capitol, Honolulu, T. H. Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Stangenwald Building, Honolulu, T. H., Attorneys for Defendants-Appellants. [163]

APPEAL BOND.

KNOW ALL MEN BY THESE PRESENTS That we, Wallace R. Farrington, Governor of the Territory of Hawaii, and William B. Lymer, Attorney General of the Territory of Hawaii, are held and firmly bound unto each and all of the plaintiffs in the above-entitled cause in the sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said plaintiffs or their respective executors, administrators or assigns, for the payment of which well and truly to be made we bind ourselves and our respective heirs, executors and administrators jointly and severally firmly by these presents.

THE CONDITION of this obligation is such that whereas the above-named defendants have taken an appeal from the District Court of the United States in and for the District and [164] Territory of Hawaii to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order dated and entered in said cause July 21, 1925, and to dissolve the preliminary injunction entered in said cause on said date.

NOW, THEREFORE, if the above-named defendants shall prosecute their said appeal to effect and answer all costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

WITNESS the hands and seals of said WALLACE R. FARRINGTON, Governor, and WILL-

IAM B. LYMER, Attorney General, this 27th day of July, 1925.

(Sgd.) W. R. FARRINGTON,
Governor of Hawaii.

(Sgd.) WILLIAM B. LYMER,
Attorney General of Hawaii.

Approved:

(Sgd.) J. T. DeBOLT,
District Judge.

Approved:

(S.) J. LIGHTFOOT,
Atty. for Plaintiffs. [165]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige, et al., Plaintiffs-Appellees, vs. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants-Appellants. Praecipe for Transcript of Record. Filed July 27, —25, at 9 o'clock and 30 minutes A. M. (Sgd.) Wm. L. Rosa, Clerk. William B. Lymer, Attorney General of Hawaii, The Capitol, Honolulu, T. H. Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Stangenwald Building, Honolulu, T. H., Attorneys for Defendants-Appellants. [166]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk:

Please prepare and certify a transcript of the record in the above-entitled case and include therein the following:

1. Plaintiffs' bill of complaint, including copies of foreign language school law and regulations attached thereto.
2. Temporary restraining order.
3. Defendants' motion to dissolve or modify restraining order, including affidavits of William B. Lymer and Henry B. Schwartz attached thereto.
4. Notice of presentation of motion to dissolve or modify restraining order.
5. Plaintiffs' motion for allowance of preliminary injunction, with attached affidavit of T. Iwanaga and notice of presentation of motion.
6. Defendants' objections to allowance of preliminary injunction, with affidavits of William B. Lymer and Henry B. Schwartz attached hereto.
7. Affidavit of J. Lightfoot in support of motion for preliminary injunction.
8. Plaintiffs' motion to strike from the record certain portions of the affidavit of Henry B. Schwartz. [167]
9. Order allowing plaintiffs' motion to strike portions of Henry B. Schwartz's affidavit, overruling defendants' objections to granting

preliminary injunction and for granting plaintiff's motion for preliminary injunction.
10. Preliminary injunction.
11. Preliminary injunction bond.
12. Defendants' exceptions to order and to issuance of preliminary injunction.
12a. Statement by respondents.
13. Petition for appeal.
14. Assignment of errors on appeal.
15. Citation on appeal.
16. Appeal bond.
17. Praecipe for transcript of record on appeal.
18. Clerk's minutes.

—and file said transcript with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Honolulu, T. H., July 27, 1925.

(S.) WILLIAM B. LYMER,
Attorney General, Territory of Hawaii.

FREAR, PROSSER, ANDERSON & MARX,

(S.) By W. F. FREAR,
Attorneys for Defendants-Appellants.

Service and receipt of copy of the foregoing praecipe is acknowledged this 27th day of July, 1925.

LIGHTFOOT & LIGHTFOOT,
(S.) WILLSON C. MOORE,
Attorneys for Plaintiffs-Appellants. [168]

ORDER OF CONTINUANCE FOR HEARING ON MOTION TO DISSOLVE OR MODIFY RESTRAINING ORDER.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Wednesday, June 24, 1925.

(Title of Court and Cause.)

Personally appeared Mr. J. Lightfoot, of the firm of Lightfoot & Lightfoot, one of the counsel for the plaintiffs above named, and also came Mr. W. B. Lymer, the Attorney General of the Territory of Hawaii, and Mr. W. F. Frear of the firm of Frear, Prosser, Anderson and Marx, one of counsel for the respondents herein, and this case was called for hearing on motion to dissolve or modify restraining order. Upon motion of Mr. Lightfoot, with consent of counsel for the respondents, it was by the Court ordered that this case be continued to June 25, 1925, at 2 o'clock P. M. for hearing on said motion to dissolve. [169]

Proceedings—Argument on Motion to Dissolve or Modify Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Thursday, June 25, 1925.

(Title of Court and Cause.)

HEARING.

On this day came Messrs. J. Lightfoot of the

firm of Lightfoot & Lightfoot and J. B. Poindexter, counsel for the plaintiffs above named and also came Messrs. W. F. Frear, of the firm of Frear, Prosser, Anderson & Marx and W B. Lymer, Attorney of the Territory of Hawaii, counsel for the defendants herein, and this case was called for hearing on motion to dissolve the temporary restraining order. Mr. Frear presented argument until the time for adjournment arrived, when it was by the Court ordered that this case be continued to June 26, 1925, at 2 o'clock P. M., for further argument. [170]

Proceedings—Further Argument on Motion to Dissolve or Modify Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Friday, June 26, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came Messrs. J. Lightfoot, of the firm of Lightfoot & Lightfoot, and J. B. Poindexter, counsel for the plaintiffs above named, and also came Messrs. W. F. Frear, of the firm of Frear, Prosser, Anderson & Marx and W. B. Lymer, Attorney General of the Territory of Hawaii, counsel for the respondents herein, and this cause was called for hearing on motion to dissolve the temporary restraining order. After ar-

gument by respective counsel, the Court ordered that this case be continued to Monday, June 29, 1925, at 2 o'clock P. M. [171]

Proceedings—Further Argument on Motion to Dissolve or Modify Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Monday, June 29, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the plaintiffs by their counsel, Messrs. Lightfoot and Poindexter, and also appeared the counsel for the respondents, Mr. W. F. Frear and Miss M. K. Ashford, and this case was called for hearing on the motion to dissolve the temporary restraining order. Mr. Lightfoot addressed the Court continuously until time for adjournment. The time for adjournment having arrived, it was by the Court ordered that this case be continued to Tuesday, June 30, 1925, at 9 o'clock A. M. for further hearing. [172]

Proceedings—Further Argument on Motion to Dissolve or Modify Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Tuesday, June 30, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the plaintiffs by their counsel, Messrs. Lightfoot and Poindexter, and also appeared the counsel for the respondents, Mr. W. F. Frear, Mr. W. B. Lymer, and Miss M. K. Ashford, and this case was called for hearing on the motion to dissolve the temporary restraining order. Mr. Lightfoot addressed the Court, continuing his argument of the previous day. Mr. Frear objected to further argument by the plaintiffs' counsel, and asked the Court to determine whether Section 266 of the Judicial Code applied. The Court ordered Mr. Lightfoot to proceed. Thereafter, the time for adjournment having arrived, it was by the Court ordered that this case be continued to Wednesday, July 1, 1925, at 1 o'clock P. M. [173]

Proceedings—Further Argument on Motion to Dissolve or Modify Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Wednesday, July 1, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the plaintiffs by their counsel, Messrs. Lightfoot and Poindexter, and also appeared the counsel for the respondents, Mr. W. F. Frear, and Miss M. K. Ashford, and this case was called for hearing on the motion to dissolve the temporary restraining order. Mr. Lightfoot continued his address to the Court, concluding at 3:30 o'clock, when Mr. Poindexter took up the argument, and continued. Thereafter, the time for adjournment having arrived, it was by the Court ordered that this case be continued to Thursday, July 2, 1925, at 9 o'clock A. M. [174]

Proceedings—Order Granting Motion to Dissolve Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Thursday, July 2, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the plaintiffs by their counsel,

Messrs. Lightfoot and Poindexter, and also came the counsel for the respondents, Messrs. Frear and Lymer, and Miss M. K. Ashford, and this case was called for hearing on the motion to dissolve the temporary restraining order. Mr. Poindexter continued to address the Court until 11:20. The petitioners then submitted to the Court and asked that the temporary restraining order be continued in force until the question as to the temporary injunction be disposed of, and that the motion to dissolve the temporary restraining order be denied. Mr. Frear then addressed the Court until noon, when the Court ordered that this case be continued at 1:30 o'clock P. M. At 1:30 o'clock P. M. Mr. Frear resumed his argument and continued. Thereafter the Court granted the motion to dissolve the temporary restraining order upon the ground that it did not comply with Sections 1243a, 1243b, and 1243c, of the United States Compiled Statutes of 1918.

The Court then ordered that the motion for a temporary injunction be set down for hearing at 9 o'clock A. M. on Tuesday, July 7, 1925. [175]

Order of Continuance.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Tuesday, July 7, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the counsel for the plaintiffs, Messrs. Lightfoot and Poindexter, and also came the counsel for the respondents, Messrs. Lymer and Frear, and this case was called for hearing on motion for a preliminary injunction. Nothing further being presented, the Court ordered that this case be continued to Wednesday, July 8, 1925, at 9 o'clock A. M. [176]

Proceedings—Order Allowing Motion to Strike and Preliminary Injunction.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Wednesday, July 8, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the counsel for the plaintiffs, Messrs. Lightfoot and Poindexter, and also came the counsel for the respondents, Messrs. Lymer and Frear, and Miss M. K. Ashford, and this case was

called for hearing on motion for a preliminary injunction. Thereupon Mr. Lightfoot filed a motion to strike from the record certain portions of the affidavit of Henry B. Schwartz, filed in support of defendant's objection to allowance of a preliminary injunction, which motion, after considerable argument by respective counsel, was granted by the Court. The counsel for the respondents then entered exception to said ruling by the Court. Thereafter the Court granted the motion on behalf of the plaintiffs for allowance of a preliminary injunction, to which ruling counsel for the respondents entered exception. The Court then ordered that the plaintiffs be required to give a bond as required by Section 1243b in the United States Compiled Statutes of 1916, designated in Volume II to cover the costs and damages as in the statute mentioned, which the Court construed to be all the fees accruing for the current year (from September 1, 1924, to September 1, 1925) in this matter, and said bond was fixed in the sum of $12,500. The Court then ordered that this case be continued to Tuesday, July 14, 1925, at 9 o'clock A. M. [177]

Order of Continuance.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Tuesday, July 14, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the counsel for the plaintiffs, Messrs. Lightfoot and Poindexter, and also came the counsel for the respondents, Mr. W. F. Frear, and Miss M. K. Ashford, and this case was called for hearing. Thereafter Mr. Lightfoot presented a proposed order, not filing same for the consideration of the opposing counsel and the Court, but the matter was continued by the Court at the request of counsel, until Friday, July 17, 1925, at 9 o'clock A. M. for final determination. [178]

Order of Continuance.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Friday, July 17, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the counsel for the plaintiffs, Messrs. Lightfoot and Poindexter, and also came

the counsel for the respondents, Mr. W. F. Frear, and Mr. Lymer, the Attorney General, and Miss M. K. Ashford, and this case was called for further hearing. After considerable argument by all counsel, the matter was continued to Tuesday, July 21, 1925, at 9 o'clock A. M. [179]

ACKNOWLEDGMENT OF SERVICE OF TEMPORARY INJUNCTION AND EXCEPTIONS.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Tuesday, July 21, 1925.

(Title of Court and Cause.)

On this day came the counsel for the plaintiffs, Messrs. Lightfoot and Poindexter, and also came the counsel for the respondents, Mr. W. F. Frear and Miss M. K. Ashford. In open court counsel for the respondents acknowledged service of a temporary injunction, and also entered exceptions to the various rulings of the Court and to the granting of the temporary injunction. [180]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Territory of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the United States Dis-

trict Court for the Territory of Hawaii, do hereby certify the foregoing pages, numbered from 1 to ——, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and I further certify that I am attaching hereto the original citation and that the cost of the foregoing transcript of record is $69.95/100, and that said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 7th day of August, A. D. 1925.

[Seal] WM. L. ROSA,
Clerk, U. S. District Court, Territory of Hawaii.
[181]

[Endorsed]: No. 4667. United States Circuit Court of Appeals for the Ninth Circuit. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and William E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Appellants, vs. T. Tokushige et al., Appellees. Transcript of Record. Upon Appeal

from the United States District Court for the Territory of Hawaii.

Filed August 17, 1925.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Filed September 15, 1925. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

No. 4667

United States

Circuit Court of Appeals

For the Ninth Circuit.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE TERRITORY OF HAWAII.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the 12th day of November, in the year of our Lord one thousand nine hundred and twenty-five. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge Presiding; Honorable FRANK H. RUDKIN, Circuit Judge; Honorable WALLACE McCAMANT, Circuit Judge.

No. 4667.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

ORDER OF SUBMISSION.

ORDERED appeal in the above-entitled cause argued by Mr. Joseph Lightfoot, counsel for the appellees, and submitted on brief on file on behalf of the appellants—and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the 22d day of March, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 4667.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD F. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

ORDER DIRECTING FILING OF OPINION AND DISSENTING OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Hon. Wm. B. Gilbert and Frank H. Rudkin, Circuit Judges, before whom (together with Hon. Wallace McCamant, C. J.) the cause was heard, ORDERED that the typewritten

opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the Clerk, and that a decree be filed and recorded in the minutes of this court in above cause in accordance with the opinion of this Court.

By direction of the Honorable Wallace McCamant, C. J., ORDERED that the dissenting opinion, written by him, and this day rendered, be forthwith filed by the Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4667.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, et al.,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Upon Appeal from the United States District Court for the Territory of Hawaii.

Before GILBERT, RUDKIN, and McCAMANT, Circuit Judges.

RUDKIN, Circuit Judge.—The present appeal involves the validity of the Foreign Language School Act of the Territory of Hawaii. The act

in question defines the term, foreign language school, as any school conducted in any language other than the English or Hawaiian language, except Sabbath schools, and its more prominent and questionable features are the following:

No such school shall be conducted in the territory unless under a written permit therefor from the Department of Public Instruction, nor unless the fee therefor shall have been paid as therein provided, and such permit shall be kept exposed in a prominent place at the school so as to be readily seen and read by visitors thereat. The fee prescribed is one dollar per pupil on the estimated average attendance of pupils at the school during the period during which such school was conducted during the next preceding school year, or if such school was not conducted during any part of such preceding school year, then at the same rate at the estimated average attendance during the school year or unexpired part thereof in question, in which latter case the amount shall be adjusted to conform to the estimated average attendance during such year or part thereof. The amount of the fee shall be estimated and determined by the Department from such information as it may have, and shall be payable by any person, persons or corporation conducting or participating in conducting such school; and all officers, teachers and all members of any committee or governing board of any such school, and in case such school is conducted by or for a corporation or voluntary association or other group of persons, all members or

associates of such corporation, association or group shall be deemed to be participants in conducting such school. Provision is then made for the collection of the fees by suit, but that provision is not deemed material here. All permits must be renewed annually on the first day of September of each year and a similar fee must be paid, provided the department shall not be required to renew a permit for conducting any foreign language school, in the conducting of which there has been a violation of the terms of the Act. All fees collected by the department under the Act shall be paid over to the treasurer of the territory and the moneys so paid are appropriated to the department to be expended in enforcing and carrying out its provisions. If at any time the funds at the disposal of the department from fees previously collected or from royalties, commissions or other moneys received in connection with the publication or sale of foreign language school text-books shall make it possible to fully and effectively carry out the provisions of the Act with the permit fees payable by the schools based on a lower rate than one dollar per pupil, the department is authorized to make such a reduction in that rate as it may deem reasonable and expedient. Every person conducting a foreign language school shall, not later than June 15, of each year, file with the department on forms prescribed or furnished by it a sworn list of all pupils in attendance at such school during the current school year, showing the name, sex, parents or guardians, place of birth and residence of each child. No person shall teach

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in a foreign language school unless and until he shall have first applied to and obtained a permit so to do from the department and this shall also be construed to include persons exercising or performing administrative powers at any school. No permit to teach in a foreign language school shall be granted unless and until the department is satisfied that the applicant for the same is possessed of the ideals of democracy; knowledge of American history and institutions, and knows how to read, write and speak the English language. It is the declared object of the Act to fully and effectively regulate the conducting of foreign language schools and the teaching of foreign languages, in order that the Americanism of the pupils may be promoted and the department is directed to carry out the provisions of the Act in accordance with its spirit and purpose. Before issuing a permit to conduct a foreign language school or to teach in any such school the department shall require the applicant for such permit to sign a pledge that the applicant will, if granted a permit to teach in such a school, abide by and observe the terms of the Act, and the regulations and orders of the department, and will, to the best of his ability, so direct the minds and studies of pupils in such schools as will tend to make them good and loyal American citizens, and will not permit such students to receive instructions in any way inconsistent therewith. No foreign language school shall be conducted in the morning before the school hours of the public schools or during the hours while the public schools are in

session, nor shall any pupil attend any foreign language school for more than one hour each day, nor exceeding six hours in any one week, nor exceeding thirty-eight weeks in any school year; provided, however, the department may in its discretion and with the approval of the Governor, modify this provision. The department shall have full power from time to time to prescribe by regulations the subjects and courses of study of all foreign language schools, and the entrance and attendance prerequisites or qualifications of education, age, school attainment, demonstrated mental capacity, health and otherwise, and the text-books used in any foreign language school. Until otherwise provided by the department, the following regulations are in effect: Up to September 1, 1923, every pupil shall have first satisfactorily completed the American public school first grade, or a course equivalent thereto, before attending or being allowed to attend any foreign language school. Beginning September 1, 1923, and thereafter, every pupil shall have satisfactorily completed the American public school first and second grades, or courses equivalent thereto, before attending or being allowed to attend any foreign language school. Beginning September 1, 1923, and thereafter, for grades one, two and three; and beginning September 1, 1924, and thereafter, for grades four and above; all new text-books used in elementary foreign language schools shall be based upon the principle that the pupil's normal medium of expression is English and shall contain, as far as practicable,

English equivalents for foreign words and idioms. The department is authorized to prepare, or cause to be prepared, or procure or arrange for procuring suitable text-books for the teaching of foreign languages in the foreign language schools and to enter into an agreement or agreements for the publishing and sale of the same. All royalties, commissions and moneys received by or on behalf of the department in connection with the publication or sale of such text-books shall be paid over to the treasurer of the territory and shall be appropriated to the department to be expended for the purposes of the Act. In every foreign language school no subjects of study shall be taught, nor courses of study followed, nor entrance, nor attendance qualifications required, nor text-books used, other than as prescribed or permitted by the department. The latter regulations were only effective until superseded in whole or in part by others made by the department, and some such were thereafter made, but they are not deemed material to our present inquiry. The department has power to appoint one or more inspectors of foreign language schools and to pay the salary and necessary expenses therefor; such inspectors and other duly authorized agents of the department shall have the right freely to visit such foreign language schools and to inspect the buildings, equipment, records and teaching thereof and the text-books used therein. If the department shall at any time become satisfied that any holder of a permit to conduct a foreign language school or to teach therein does not possess

the qualifications required by the Act, or shall have violated or failed to observe any of the provisions of the Act or of the regulations or orders of the department, the department may then and thereupon revoke the permit theretofore granted and the same shall thereupon be and become null and void. Any person who shall conduct or participate in conducting a foreign language school or who shall teach in a foreign language school contrary to the provisions of the Act, or who shall violate or participate in violating any of the provisions thereof, or any of the regulations or orders of the department, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed $25, and each day's violation shall be deemed a separate offense. The Act further provides that if any section or part thereof is declared unconstitutional or invalid by the courts, the same shall not affect the validity of the Act as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid.

There are 163 foreign language schools in the territory affected by the Act. Nine of these are conducted in the Korean language; seven in the Chinese language, and the remainder in the Japanese language. The plaintiffs are members of numerous voluntary unincorporated associations conducting foreign language schools on behalf of the Japanese. The total number of such schools is 146; the schools are owned and conducted by upwards of 5,000 persons; the property holdings ag-

gregate $250,000; the number of pupils enrolled is 20,000, and the number of teachers employed is 300. The defendants are the Governor of the territory, the Attorney General of the territory, and the Superintendent of Public Instructions of the territory.

After a hearing the Court below granted a temporary injunction restraining the defendants, their deputies, assistants, subordinates, and each and every of them, until the further order of the Court, from requiring the plaintiff, their agents, servants or teachers, to secure permits to conduct foreign language schools as required by the Act or any permit whatever; from requiring the plaintiffs, their agents, servants or teachers to pay the fees required by law, or to pay any fee whatsoever for conducting foreign language schools; from requiring the plaintiffs, their agents, servants or teachers to make the reports required of them; from requiring the plaintiffs, their agents, servants or teachers to give the pledges referred to in the Act, or any pledge whatever, affecting their duties in reference to foreign language schools; from requiring the plaintiffs, their agents, servants or teachers to conform to any regulation or regulations prescribed by the Department of Public Instruction relating to the subject and courses of study and the qualifications of education, age, school attainment, demonstrated mental capacity, and otherwise, of the pupils attending such foreign language schools, and from requiring plaintiffs, their agents, servants or teachers to use the text-

books prescribed by the department. The defendants were further enjoined and restrained, until the further order of the Court, from in any manner enforcing against the plaintiffs, their agents, servants or teachers, the pains, penalties and forfeitures provided in the Act, or from in any manner arresting or causing to be arrested in civil or criminal proceedings, the plaintiffs, their agents, servants or teachers on account of any alleged violation by them or either of them of the terms or provisions of the Act, and from in any manner interfering with the property, business and affairs of the plaintiffs for or on account of any such violation.

The appeal now before this Court is from that decree. If the legislation complained of is unconstitutional, the right of the appellees to maintain this suit is, in our opinion, not open for question. Pierce vs. Society of Sisters, 268 U. S. 510. The right of the pupils, against whom the legislation is directed, to acquire a knowledge of the Japanese language and the right of others to teach them that language is equally beyond question. Meyer vs. Nebraska, 262 U. S. 390; Bartels vs. Iowa, Id. 404.

It only remains to consider, then, whether the legislature can be upheld and sustained as a proper exercise of the police power of the territory, and in that connection we must remember that we are now concerned with the public school system established by the territory and maintained at public expense. These foreign language schools

are in no sense a part of that system, as they are maintained through private enterprise, and attendance upon them is not compulsory. The children who attend them are compelled to and do attend the public schools and fully discharge all their duties and obligations in that regard, and when they have done this, we take it for granted that they have an undoubted right to acquire a knowledge of foreign languages, music, painting, drawing and such other accomplishments, not inimicable to good order and good morals, as their parents or guardians see fit to bestow upon them.

In Berea College vs. Kentucky, 211 U. S. 45, a majority of the court held that a state might withhold from its corporations, privileges and immunities which it could not constitutionally withhold from individuals, and affirmed the judgment of the Supreme Court of the state. In a dissenting opinion, conflicting in nowise with the opinion of the majority, Mr. Justice Harlan said:

> "The capacity to impart instruction to others is given by the Almighty for beneficent purposes and its use may not be forbidden or interfered with by Government—certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety. The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property—especially, where the services are rendered for compensation. But even if such right be not strictly a property right, it is, beyond question,

part of one's liberty as guaranteed against hostile state action by the Constitution of the United States. This Court has more than once said that the liberty guaranteed by the Fourteenth Amendment embraces 'the right of the citizen to be free in the enjoyment of his faculties,' and 'to be free to use them in all lawful ways.' * * * If pupils, of whatever race —certainly, if they be citizens—choose the consent of their parents or voluntarily to sit in a private institution of learning while receiving instruction which is not in its nature harmful or dangerous to the public, no Government, whether Federal or state, can legally forbid their coming together, or being together temporarily, for such an innocent purpose."

Comprehensive and all pervading as the police power is, there are certain rights and certain relations beyond its scope. One of these is the right of a parent to educate his own child in his own way, at least beyond the requirements of the local law. Conceding then, as we must, that the appellees have a right to maintain these foreign language schools; that teachers have a right to teach therein, and that pupils have a right to be taught, how can these comprehensive regulations and prohibitions be sustained. Before obtaining a permit to teach, the applicant must satisfy a territorial officer that he is possessed of the ideals of democracy, a knowledge of American history and institutions, and knows how to read, write and speak

the English language. A knowledge of the foreign language is not a prerequisite. He must pledge himself to abide by and observe the terms of the Act and such regulations and orders as the department may see fit to make, and he and his pupils must use only such text-books as are compiled and sold by legislative authority. He must so direct the minds and studies of his pupils as will tend to make them good and loyal American citizens, and this he must accomplish after the pupil has completed the second grade in the common schools, and within one brief hour each day, for not exceeding six days a week and thirty-eight weeks in the year. In other words, in a school conducted primarily for the teaching of a foreign language the pupils must take a course in Americanism; a course not required of any other class of citizens or students. We feel quite safe in saying that if such a system of regulations were enforced by one of our American commonwealths against an American college in which foreign languages are taught, it would shock the conscience of mankind. An attempt is made to justify the Act, however, because of the peculiar conditions prevalent on the Islands. They have a large Japanese population there, and it is said that within the next fifteen years a majority of the electorate will be American citizens of Japanese extraction. It is further said that the Japanese do not readily assimilate with other races; that they still adhere to their own ideals and customs and are still loyal to their Emperor. It is a matter of common knowledge that the Japanese do not readily

assimilate with other races and especially with the white race. This is in part a matter of choice and in part a matter of necessity, because one cannot assimilate alone. No doubt, the Japanese tongue will be spoken on the Islands for generations yet to come, and no doubt the Japanese will be slow to give up their customs and their ideals, and we took the Islands *cum onere* and extended the Constitution of the United States there, and every American citizen has a right to invoke its protection. You cannot make good citizens by oppression or by a denial of constitutional rights, and we find no such conditions there as will justify a departure from the fundamental principles of constitutional law. If the power to so legislate is once conceded, the time and manner of its exercise is largely a matter of legislative discretion over which the courts have little or no control. An attempt was made to justify the foreign language school laws of Nebraska, Iowa and Ohio on similar grounds, but the attempt was unsuccessful.

> "It is said the purpose of the legislation was to promote civil development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and 'that the English language should be and become the mother tongue of all children reared in this state.' It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign

atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled.

"That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak our language as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means." Meyers vs. Nebraska, *supra.*

For these reasons we are of opinion that the Act in question, in both spirit and purpose, abridges the privileges and immunities of citizens of the United States, and deprives them of liberty and property without due process of law.

The decree is affirmed.

DISSENTING OPINION.

McCAMANT, Circuit Judge.—I am unable to concur in the conclusion that the statute in question is wholly void. In my opinion the injunction should not go further than to restrain the defendants from interfering with the patronage of appellees' schools by any pupils desiring to attend them and from requiring appellees to use only the text-

books prescribed by the Department of Public Instruction.

[Endorsed]: Opinion and Dissenting Opinion of McCamant, C. J. Filed Mar. 22, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4667.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD F. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Territory of Hawaii.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Territory of Hawaii, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the appellees and against the appellants.

It is further ordered, adjudged and decreed by this Court, that the appellees recover against the appellants for their costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and entered March 22, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4667.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD F. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, F. D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and two (202) pages, numbered from and including 1 to and including 202, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 35 of the Revised Rules of the Supreme Court of the United States, as the

originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 10th day of June, A. D. 1926.

[Seal]

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4160)

originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 10th day of June, A. D. 1926.

[Seal]

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4160)

FILED
JUN 21 1926
R. STANSBURY
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1925

No. 465

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18

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,
Petitioners,

vs.

T. TOKUSHIGE, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals for the Ninth Circuit,
AND BRIEF IN SUPPORT THEREOF.

WILLIAM B. LYMER,
Attorney General of the Territory of Hawaii,

MARGUERITE K. ASHFORD,
First Deputy Attorney General of the Territory of Hawaii,
Attorneys for Petitioners.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1925

No.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Petitioners,

vs.

T. TOKUSHIGE, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable William Howard Taft, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petitioners herein deeming themselves aggrieved by the judgment in the case of "Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii,

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and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Appellants, vs. T. Tokushige, et al., Appellees," No. 4667, by the United States Circuit Court of Appeals for the Ninth Circuit, now make and file this their petition for a writ of certiorari for its review.

Your petitioners file herewith a certified copy of the entire transcript of record of said case, including the proceedings in said Circuit Court of Appeals.

Your petitioners respectfully show:

The Legislature of the Territory of Hawaii, by Act 30 of the special session of 1920, as amended by Act 171 of the session of 1923, and as further amended by Act 152 of the session of 1925, which laws are set forth in full in the appendix to this petition and brief in support thereof, regulated the foreign language schools of the Territory of Hawaii. The first two of these Acts are now Chapter 32 (Sections 390-399) of the Revised Laws of Hawaii, 1925 (R. 56-66).

Under each of these laws as passed, certain foreign language schools of the Territory instituted court proceedings to determine the validity thereof, but the proceeding now before this Court is not concerned with those causes save the equity bill brought upon June 13, 1925, in the United States District Court of the Territory of Hawaii, seeking a sweeping injunction against the enforcement of all the provisions of the various statutes regulating the foreign language schools and the regulations adopted by the Territorial Department of Public Instruction under the powers granted it by those laws (R. 4-68).

Under this bill a temporary restraining order was issued ex parte forthwith but was not served on defendants until Monday, the 15th (R. 69-72). The plaintiffs' schools had not been in session for several weeks but re-opened on that Monday. The bill, in the view of the petitioners herein showed no immediate danger of irreparable injury but did show that Act 30 had been enacted more than four and one-half years, and Act 70 more than two years, previously, and that Act 152, which had been recently enacted, merely perfected the remedies for enforcing the payment of the license fees and expressly provided that the fees might be paid under protest and that suit might be brought to recover them back if their validity was questioned; it further provided that no injunction should issue from any Court to prevent their collection (R. 4-68).

After long delay against the protest of petitioners herein, a hearing was had upon petitioners' motion to dissolve the temporary restraining order, which motion was ultimately granted (R. 171-176).

Thereafter, following the filing of a number of affidavits on both sides, together with a motion for a preliminary injunction on the part of the plaintiffs in the District Court, a hearing was had upon the motion for the issuance of a preliminary injunction (R. 177). That motion was granted by the District Judge without argument by counsel (R. 178), and an appeal taken therefrom to the Circuit Court of Appeals for the Ninth Circuit under Section 129 of the Judicial Code (amended by Act of February 13, 1925).

Upon the appeal, the main contentions of petitioners herein were that equity could not enjoin the enforce-

ment of the foreign language school laws because (1) the plaintiffs had an adequate remedy at law, (2) the proceeding was not the kind of case in which equity could enjoin the prosecution of a civil or criminal proceeding, (3) the legislation was constitutional, and (4) aside from the foregoing, the circumstances were such that an injunction should not issue as a matter of sound judicial discretion.

After a hearing in the Circuit Court of Appeals, that Court sustained the decree of the District Court allowing the preliminary injunction upon the ground that the foreign language school laws of the Territory abridged the privileges and immunities of citizens of the United States and deprived them of liberty and property without due process of law (R. ...).

The result of this decision was that as the ultimate merits of the case had been determined by the decision of the Circuit Court of Appeals declaring the law unconstitutional, no further proceedings were either necessary or possible in the District Court. The other points raised and argued by the appellants could not affect the controversy while the judgment of the Circuit Court of Appeals remained unreversed.

Petitioners submit that the judgment of the Circuit Court of Appeals was erroneous in that it held unconstitutional the foreign language school law of the Territory which regulated but did not prohibit the conducting of foreign language schools.

Wherefore, and for the reasons set out at length in the brief filed herewith in support of this petition, petitioners pray that a writ of certiorari be issued to the

United States Circuit Court of Appeals for the Ninth Circuit, commanding it to certify to this Court for its review and determination a transcript of the proceedings in said case and that the judgment of said court be reversed.

Dated at Honolulu, Hawaii, this 7th day of June, 1926.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1925

No.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Petitioners,

vs.

T. TOKUSHIGE, et al.,

Respondents.

BRIEF ON PETITION FOR WRIT OF CERTIORARI

OPINIONS IN THE COURTS BELOW

A Writ of Certiorari is now sought to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, made and entered in the case of Wallace R. Farrington, et al., appellants, vs. T. Tokushige, et al., appellees, Number 4667 (opinion not yet officially reported and herein appearing at R. 187.), which said judgment affirms the order of the United

States District Court for the Territory of Hawaii, made and entered in the case of T. Tokushige, et al., plaintiffs, vs. Wallace R. Farrington, et al., defendants, issuing a preliminary injunction (no written opinion, order appears, R. 129), enjoining defendants therein and each of them from enforcing the Foreign Language School Acts in any manner therein set forth.

JURISDICTION OF THIS COURT

The judgment now sought to be reviewed was entered in and by the Circuit Court of Appeals for the Ninth Circuit on March 22, 1926 (R. 201.).

The specific claim advanced and ruling made in the Circuit Court of Appeals, which is relied upon as the basis of this court's jurisdiction, is as follows:

The question involved is one of grave public importance, involving as it does the policy of the Territory of Hawaii in regulating the Foreign Language Schools of the Territory. If the judgment of the Circuit Court of Appeals stands, its substantial effect is to free the numerically preponderant element in the Territory, that is, aliens, from any restraints in the education of their children—American citizens—in a way that will destroy their understanding of and sympathy for American institutions and their allegiance to the Territory and to the United States.

The courts below have held on the issuance of a preliminary injunction that these laws do not fall within the police power of the Territory and are unconstitutional.

Jurisdiction is invoked under Section 240 of the Judicial Code and under Rule 35, 5-B of this Court, particularly that portion reading: "or has decided an important question of Federal law, which has not been, but should be, settled by this Court."

STATEMENT OF FACTS

In 1920 a Federal Commission, acting under the United States Commissioner of Education, issued an official report entitled "A Survey of Education in Hawaii." This was published officially as a public document by the United States government as Bulletin 1920, Number 16.

Throughout the proceedings of this cause it has been conceded that the situation in Hawaii with regard to Foreign Language Schools is a matter concerning which the court may take judicial notice. As the Survey, just referred to, is perhaps the best account of the conditions in the Foreign Language Schools, which the legislation of Hawaii designed to meet, ten copies are being forwarded with this petition and brief. Reference will be made to the situation as developed by that Survey.

In view of the predominating number of Japanese among the alien population of Hawaii, the situation in the Japanese Language Schools was the subject of an intensive study by the Federal Commission (Survey pp. 105-143). This Commission found that in those schools, which ran both before and after the hours during which the public schools were in session, so that a Japanese child's school day ran practically from dawn to dusk (Survey p. 114), the instructors were funda-

mentally alien in their viewpoint, all of them having been imported from Japan for the purpose of instruction in these schools (Survey pp. 113-114). The books used were found to be slightly revamped from the original Japanese texts published under the supervision of the Japanese government (Survey pp. 116-125). Even in these revised editions used in Hawaii the Japanese flag was held up to reverence and the Japanese Emperor referred to as "our Emperor" (Survey p. 118).

The Survey, moreover, found that due to the sessions of these Foreign Language Schools being held in some instances before the public schools, in other instances afterwards, and in still other instances both before and after, without vacation on Saturday and with very little vacation during the entire year, the resulting fatigue of the children, as well as the nationalistic type of instruction, seriously hampered the effective instruction of the child in the public schools (Survey pp. 114, 127-130).

The Commission reached the conclusion (Survey p. 134) that the Language Schools "are centers of influence which, if not distinctly anti-American, are certainly un-American."

Following this report, Act 30 of the Session Laws of 1920, the first of the Foreign Language School laws, was enacted.

This law (p. i, Appendix) provided that no one should conduct or teach in a Foreign Language School without a permit from the Department of Public Instruction. No fees were imposed but the applicant was required to give a pledge to observe the law and the

regulations of the Department thereunder and to the best of his ability to direct the minds and studies of the pupils in such a way as would tend to make them good and loyal American citizens and not to instruct them in a way inconsistent therewith. A permit might be revoked for cause after notice and an opportunity to be heard. Teachers were required to qualify in knowledge of ideals of democracy, American history and institutions and the English language, but the requirement as to English was to be liberally construed for a period of two years so as to afford sufficient time to qualify. Subject to modification by the Department, in case it should find that it could do so consistently with the object of the Act, the Foreign Language Schools were not to hold sessions before or during the sessions of the public schools and, although the afternoon sessions might be longer than one hour, no pupil was to attend more than one hour a day nor more than six hours a week nor more than thirty-eight weeks a year. The Department was authorized to prescribe the courses of study and the text books but not to furnish books at its expense. The penalty for a violation of the Act was a fine not to exceed $25. In order to allow ample time for preparation, the Act was not to take effect until July 1, 1921, although enacted November 24, 1920.

Under this law certain regulations were passed by the Department of Public Instruction. These regulations prescribed that up to September 1, 1923, pupils should have first satisfactorily completed the public school first grade or its equivalent and thereafter the first and second grades or their equivalent before at-

tending a Foreign Language School; also that beginning September 1, 1923, and thereafter, for grades one, two and three, and beginning September 1, 1924, and thereafter, for grades four and above, all new text books used in elementary Foreign Language Schools should be based upon the principle that the pupil's normal medium of expression is English and should contain as far as practicable English equivalents for foreign words and idioms.

The statute having been contested by some of the Japanese Language Schools and the Judge who tried the case having held that although the Act itself was valid, the regulations were not, the Legislature thereupon in 1923 by Act 171 amended Act 30 of 1920 (Appendix p. iv), in large part by incorporating in the Act the substance of the regulations of the Department of Public Instruction at the same time enlarging the powers of the Department in the making of regulations.

Also, in view of additional light which had been thrown on the whole situation, the Legislature deemed it advisable to provide and did provide for the appointment of one or more inspectors of the Foreign Language Schools; and, in order to provide the necessary funds for this and for other expenses in connection with the Foreign Language Schools, the payment of a license fee at the rate of $1 per pupil per school year (Sept. 1-Aug. 31) was required as a prerequisite to obtaining a permit, and all of the proceeds of the fees were appropriated for the expenses of carrying out the Act, but it was provided also that if the fees should yield more than was necessary for that purpose the

Department might reduce them. In addition the schools were required to make annual reports to the Department, and it was provided also that if any part of the Act should be held unconstitutional or invalid that should not affect the vaiidity of the Act as a whole or of any other part.

Finally the Legislature of 1925, because of the difficulties in collecting fees owing to the elusive nature of the Language Schools as being not only unincorporated associations but without constitutions or by-laws and of uncertain or unascertainable membership, enacted Act 152 (Appendix p. x), amending the provision of the law relating to fees by providing that the fees should be payable by the schools whether they took out permits or not (the law previously having made the payment of a fee merely a prerequisite to obtaining a permit and the remedy merely a penal prosecution for conducting a school without a permit), by providing civil and penal remedies for their collection, and by prohibiting the issuance of injunctions against either civil or penal remedies as to the fees but providing also that the fees might be paid under protest and that action might be brought to recover them back if their validity should be questioned. This Act was not to become operative until the 10th of May.

Following the enactment of this last law the plaintiff schools closed for several weeks and then brought this suit in the United States District Court at Honolulu, June 13, 1925. Upon obtaining the temporary restraining order issued upon the filing of their suit, they then reopened and are now running.

Upon the hearing of the cause before the District Judge, after extended argument upon the motion to dissolve the restraining order and as a result of certain further proceedings in the cause, a temporary injunction was issued restraining the defendants from enforcing the various Acts in any of the modes enumerated in the court's order (R. 178). From that order the defendants appealed to the Circuit Court of Appeals for the Ninth Circuit (R. 149), where the judgment of the court was entered affirming the order of the District Court upon the ground that the Foreign Language School laws of the Territory were unconstitutional and without the scope of the police power of the Territory.

ASSIGNMENT OF ERRORS

The petitioners herein rely particularly upon the assignment of error made in the Circuit Court of Appeals and here repeated that the Foreign Language School Acts of the Territory are constitutional.

"I. (17)

"Said Judge erred in so enjoining or causing to be enjoined the plaintiffs, notwithstanding that said Acts and regulations and the several provisions thereof are constitutional and valid, and in not holding that the same are constitutional and valid as to each of said provisions." (R. 155.)

II.

The court erred in declaring the entire statute unconstitutional without regard to the fact that the various provisions thereof were independent of each other.

ARGUMENT

The Foreign Language School laws of Hawaii do not violate the Constitution nor do they fall within the actual decisions of this Court in the recent Nebraska, Iowa and Oregon cases.

The great question before this court is whether or not this case falls within the actual decisions of this court in *Pierce v. Society of Sisters*, 268 U. S. 510, *Meyers v. Nebraska*, 262 U. S. 390, and *Bartels v. Iowa*, 262 U. S. 404. The Circuit Court of Appeals held that the decisions in those cases govern the case at bar. The petitioners herein contend that those cases govern prohibitory legislation alone and not purely regulatory legislation such as has been adopted by the Legislature of Hawaii which attempts rather to supervise and control than to abolish Foreign Language Schools.

The petitioners herein feel that the decisions of the court in *Meyers v. Nebraska* and *Bartels v. Iowa* support rather than militate against the constitutionality of the Hawaiian legislation relating to Foreign Language Schools.

The Nebraska statute absolutely prohibited (1) the teaching of any subject in any language other than the English language in any school, public or private, and irrespective of the age or stage of development of the pupils or students, and (2) the teaching of any language as such, whether the teaching of it was in that language or in the English language, to any pupils whether in public or private schools until the pupils should have successfully passed the 8th grade, that is, should have been prepared to enter the high school. The

Iowa and Ohio statutes were of a similar nature. Those Acts thus absolutely prohibited the teaching of any subject in a foreign language at any time and any foreign language until after the primary and grammar grades and in effect abolished a large group of schools altogether. The Acts now in question do not prohibit the teaching of foreign languages at all nor do they at all prohibit the teaching of those languages in the languages themselves, nor do they in effect abolish any schools or even handicap them in any way to which exception can be taken. The decision in the second case, Bartels v. Iowa, covering the Iowa and Ohio statutes, merely follows the decision in the first case, Meyers v. Nebraska, and the dissenting opinion of Justices Holmes and Sutherland in both cases is found at page 412 in the second case. The reasoning of the majority of the court is found in the first case. Even the majority considered the object of the Act praiseworthy but held that the legislature undertook to accomplish it in a wrong way—that being a prohibitory as distinguished from a regulatory statute and the occupation being one which was useful in itself and therefore subject only to regulation. The Court said on pages 400, 402:

"The challenged statute forbids the teaching in school of any subject except in English; also the teaching of any other language until the pupil has attained and successfully passed the eighth grade, which is not usually accomplished before the age of twelve. * * * "

"The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy

to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefor in time of peace and domestic tranquility has been shown. * * *"

"Our concern is with the prohibition approved by the Supreme Court. Adams v. Tanner, supra, p. 594, pointed out that mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper. No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed. We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the State."

In these passages the Court shows the real basis of its decision—that the Act was one of "abolition" and it distinctly states that "regulation may be entirely proper." Then, apparently in order to insure that it would not be misunderstood, it went further in other parts of the decision and said much more that would justify the legislation now in question as follows, on pages 400, 401, 402:

"The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently pro-

moted. The Ordinance of 1787 declares, 'Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.' Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the States, including Nebraska, enforce this obligation by compulsory laws.

"Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. * * *"

"That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. * * *"

"The power of the State to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. * * *"

In the Oregon case of Pierce v. Society of Sisters of Holy Names, 268 U. S. 510, the Act, as a prohibitory act, went even further than the acts of Nebraska, Iowa and Ohio. It prohibited attendance of children between the ages of eight and sixteen years at any school other than a public school during the portion of the year in which the public schools were in session in the respective districts in which the children resided, except in special cases in which the children were not normal or had completed the eighth grade or resided

at considerable distances from any public school, etc. The State Court was not called upon to pass upon the validity of the Act, but its invalidity was so patent that doubtless that court would have held it unconstitutional. The lower Federal Court as well as the Federal Supreme Court unanimously held it invalid. But, in this case also as in the Nebraska case, the court evidently did not wish to be misunderstood and hence it said, on page 534:

"No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."

It would seem as if nothing more could be desired in order to support the Acts in question than these opinions of the Federal Supreme Court. It would indeed, we submit, be a sad commentary on our system of government as well as a shock to our common sense to hold that the Territory must stand by impotently as a mere onlooker and watch its foreign-born guests conduct a vast system of schools of American pupils—keeping these infants at it from dawn to dusk before and after the public school hours, teaching them loyalty to a foreign country and disloyalty to their own country, and hampering them during their tender years in the learning of the home language in the public schools; to hold that the Territory could not by mere regulatory

measures even alleviate these evils to a moderate extent while not interfering in the least with the proper maintenance of these schools or the teaching of foreign languages in them but on the contrary making them more efficient for this their declared main object. And yet this is the substance of the plaintiffs' contention—in the face of the pronouncements of the highest court in the land that the American people have always regarded education as a matter of supreme importance; that religion, morality and knowledge are necessary to good government and the happiness of mankind and hence justify the encouragement of schools and the means of education; that compulsory educational laws are justifiable; that education of the young is possible only in schools conducted by especially qualified persons; that the State may go very far in order to improve the quality of its citizens physically, mentally and morally; that it may compel attendance at some school and make reasonable regulations for all schools and even require the teaching of English; that it may reasonably regulate all schools and inspect, supervise and examine them, their teachers and pupils; that it may require all children of proper age to attend some school; that teachers shall be of good moral character and patriotic disposition; that certain studies plainly essential to good citizenship be taught and that nothing be taught which is manifestly inimical to the public welfare. The justification of the establishment and maintenance of the public school system is the future general welfare of the state as well as the welfare of the persons immediately concerned who are not fully *sui juris;* and that is the justification of the legislation

now in question. It is of course immaterial that the criticism of these schools is not equally applicable to all of them or not at all applicable to some of them—especially at the present time. The general situation is what must be considered and that too at the time of the passage of the legislation or as it might be now but for the legislation.

Even if one or more of the provisions of the Foreign Language School Acts be unconstitutional, the remainder of the Act, if found constitutional, should be declared valid.

The majority opinion in Berea College v. Kentucky, 211 U. S. 45, the dissenting opinion in which was quoted by the Circuit Court of Appeals in its decision, holds in no uncertain terms that one section of a statute may be repugnant to the Constitution without rendering the whole Act void and in a like manner one provision of a section may be invalid by reason of its not conforming to the Constitution, while all the other provisions may be subject to no constitutional infirmity. The only question to be considered in such case is whether such provisions, the constitutional and the unconstitutional, are so inter-dependent that one cannot operate without the other.

It is respectfully urged that in this case, if this court shall determine that the Circuit Court of Appeals was correct in holding one or more of the provisions of the Foreign Language School laws invalid as repugnant to the Constitution, it should yet sustain such provisions of the law as do not fall within the constitutional prohibitions.

The provisions of the Acts are not essentially interdependent. That is shown by the growth of the law, one or two provisions being contained in the first enactment and others being added or the original ones modified from time to time as experience suggested new manners of dealing with the situation.

CONCLUSION

It is submitted that not only is the Foreign Language School law constitutional, being a regulatory and not a prohibitory law and therefore within the restrictive language of this court in the Nebraska, Iowa and Oregon cases, but that there is enough in the law to uphold it even though specific portions be invalid as unconstitutional and be stricken from the Act in its operative effect.

Respectfully submitted,

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Attorneys for Petitioners.

(APPENDIX FOLLOWS.)

American history and institutions and knows how to read, write and speak the English language.

Provided, however, that the provision concerning knowledge of the English language shall be liberally construed during the two years after this Act goes into effect; it being understood that it would be difficult within that time to secure teachers fully qualified under this section and at the same time qualified to teach a foreign language. And provided, further, and it is hereby declared that the object of this Act is to regulate and not to prohibit the conducting of foreign language schools and the teaching of foreign languages; but to regulate the same so that the Americanism of the pupils may be promoted, and the department is hereby directed to carry this Act into effect in accordance with the spirit of this declaration.

Section 5. Before issuing a permit to conduct a foreign language school or to teach in such a school the department shall require the applicant for such permit to sign a pledge that the applicant will, if granted a permit to conduct or teach in such a school, abide by and observe the terms of this law and the regulations and orders of the department and will, to the best of his ability, so direct the minds and studies of pupils in said school as will tend to make them good and loyal American citizens and will not instruct or permit said pupils to receive instruction in said school in any way inconsistent therewith.

Section 6. No foreign language school shall be conducted in the morning before the school hours of the public schools or during the hours while the public schools are in session. Nor shall any pupil attend a

foreign language school for more than one hour each day nor exceeding six hours in any one week, nor exceeding thirty-eight weeks in any school year.

Provided, however, that the department may, in its discretion, with the approval of the governor, modify the terms of this section if it deems it can do so consistently with the declared object of this Act.

Section 7. The department shall have full power from time to time to prescribe the course and courses of study and the text books to be used in any foreign language school, and no other course of instruction or text books shall be used in such schools, except the ones prescribed by the said department. No books used in any foreign language school shall be furnished at the expense of the department.

Section 8. If the department shall at any time become satisfied that any holder of a permit to conduct a foreign language school or to teach therein does not possess the qualifications herein required, or shall have violated or failed to observe any of the provisions of this Act, or of the regulations or orders of the department, the department may then and thereupon revoke the permit theretofore granted and the same shall thereupon be and become null and void.

Provided, however, that before so doing, the department shall first notify the holder of said permit to show cause why such action should not be taken and shall give such holder full opportunity to be heard in defense. The decision of the department shall be final.

Section 9. Any person who shall conduct a foreign language school, or who shall teach in a foreign lan-

guage school, contrary to the provisions of this Act, or who shall violate any of the terms thereof, or of the regulations or orders of the department, shall be guilty of a misdemeanor and upon conviction thereof punished by a fine not to exceed twenty-five dollars ($25.00). Each day's violation of this Act shall be deemed a separate offense.

Section 10. This Act shall take effect on the first day of July, 1921.

Approved this 24th day of November, A. D. 1920.

C. J. McCARTHY,
Governor of the Territory of Hawaii.

ACT 171

Session Laws of 1923, Territory of Hawaii

AN ACT to Amend Sections 1, 2, 4, 7 and 8 of Act 30 of the Special Session Laws of 1920, and Adding Thereto a New Section to be Known as Section 9A, Relating to Foreign Language Schools.

Be It Enacted by the Legislature of the Territory of Hawaii:

Section 1. Section 1 of Act 30 of the Special Session Laws of 1920, is hereby amended to read as follows:

"Section 1. The term 'foreign language school,' as used in this Act, shall be construed to mean any school which is conducted in any language other than the English language or Hawaiian language, except Sabbath schools. All subdivisions and activities under the

direction, management or supervision of any foreign language school, whatever language may be used in such subdivision and/or activities, shall be subject to the provisions of this Act. The word 'department' shall mean the department of public instruction of the Territory of Hawaii."

Section 2. Section 2 of Act 30 of the Special Session Laws of 1920 is hereby amended to read as follows:

"Section 2. No person shall conduct a foreign language school in the Territory of Hawaii without a written permit from the department of public instruction. All permits, licenses, certificates or consents of every kind or nature issued by the department to any foreign language school, or to any person or persons conducting such school—irrespective of the law or laws under which the same were issued and the time when issued—shall on or after May 5, 1923, be of no effect. After September 1, 1923, no permit shall be issued without a fee being paid therefor, the amount of which fee shall be based on the school attendance. The said fee shall be computed on the average attendance of the previous year at the rate of one dollar ($1.00) per pupil, except as to schools just starting, the fee of which shall be computed at the same rate on the expected average attendance—as estimated by the department—and shall be correctly adjusted to conform to the actual average attendance, by an addition to, or a subtraction from, the fee payable for the following year.

"On September 1, 1923, and annually thereafter, all permits, in order to be valid, must be renewed and shall, unless previously forfeited, be renewed by the

department on the payment of a fee determined in the same manner as above specified; provided that the department shall not be required to renew a permit for the conducting of any foreign language school in the conducting of which there has been a violation of the terms or provisions of this Act. All of said fees collected by the said department shall be paid over to the treasurer of the Territory of Hawaii, and the moneys so paid are hereby appropriated to the department of public instruction to be expended in enforcing and carrying out the provisions of this Act. If at any time the funds at the disposal of the department from fees previously collected, or from royalties, commissions or other moneys received in connection with the publication or sale of foreign language school text books, shall make it possible fully and effectively to carry out the provisions of this Act with the permit fees payable by the schools based on a lower rate than one dollar ($1.00) per pupil, the department is authorized to make such a reduction in that rate as it may deem reasonable and expedient.

"Every person conducting a foreign language school shall, not later than June 15 of each year, file with the department on forms prescribed or furnished by it, a sworn list of all pupils in attendance at said school during the current school year, showing the name, sex, parents, or guardians, place of birth and residence of each child; provided, however, that the department may, on cause shown, modify the requirements of this sentence during the year 1923."

Section 3. Section 4 of Act 30 of the Special Session Laws of 1920 is hereby amended to read as follows:

"Section 4. No permit to teach in a foreign language school shall be granted unless and until the department is satisfied that the applicant for the same is possessed of the ideals of democracy; knowledge of American history and institutions, and knows how to read, write and speak the English language.

"It is hereby declared that the object of this Act is to fully and effectively regulate the conducting of foreign language schools and the teaching of foreign languages, that the Americanism of the pupils may be promoted; and the department is hereby directed to carry this Act into effect in accordance with this declaration."

Section 4. Section 7 of Act 30 of the Special Session Laws of 1920 is hereby amended to read as follows:

"Section 7. The department shall have full power from time to time to prescribe, by regulations, the subjects and courses of study of all foreign language schools, and the entrance and attendance prerequisites or qualifications of education, age, school attainment, demonstrated mental capacity, health and otherwise, and the text books to be used in any foreign language school.

"Until otherwise provided by the department, the following regulations shall be in effect:

"From the present up to September 1, 1923, every pupil shall have first satisfactorily completed the American public school first grade, or a course equivalent thereto, before attending, or being allowed to further attend, any foreign language school.

"Beginning September 1, 1923, and thereafter, every pupil shall have first satisfactorily completed the American public school first and second grades, or courses equivalent thereto, before attending or being allowed to further attend, any foreign language school.

"Beginning September 1, 1923, and thereafter, for grades one, two and three; and beginning September 1, 1924, and thereafter, for grades four and above; all new text books used in elementary foreign language schools shall be based upon the principle that the pupil's normal medium of expression is English and shall contain, as far as practicable, English equivalents for foreign words and idioms.

"The department is hereby authorized to prepare or cause to be prepared or procure or arrange for procuring suitable text books for the teaching of foreign languages in the foreign language schools and to enter into an agreement or agreements for the publishing and sale of the same. All royalties, commissions and money received by or on behalf of the department in connection with the publication or sale of such text books shall be paid over to the treasurer of the territory and are hereby appropriated to the department to be expended for the purposes of this Act. In every foreign language school no subject of study shall be taught, nor course of study followed, nor entrance nor attendance qualification required, nor text books used, other than as prescribed or permitted by the department, provided, however, that the regulations set forth in Section 7 of this Act shall be effective until superseded in part, or in whole, by others made by the department."

Section 5. Section 8 of Act 30 of the Special Session Laws of 1920, is hereby amended to read as follows:

"Section 8. The department shall have power to appoint one or more inspectors of foreign language schools and to pay the salaries and necessary expenses thereof; such inspectors and other duly authorized agents of the department shall have the right freely to visit said foreign language schools and to inspect the buildings, equipment, records and teaching thereof and the text books used therein.

"If the department shall at any time become satisfied that any holder of a permit to conduct a foreign language school or to teach therein does not possess the qualifications herein required, or shall have violated or failed to observe any of the provisions of this Act, or of the regulations or orders of the department, the department may then and thereupon revoke the permit theretofore granted and the same shall thereupon be and become null and void."

Section 6. Act 30 of the Special Session Laws of 1920 is hereby amended by adding thereto a new section to be known as Section 9A and to read as follows:

"Section 9A. If any section or part of this Act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the Act as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid."

Section 7. This Act shall take effect upon its approval.

Approved this 2nd day of May, A. D. 1923.

W. R. FARRINGTON,
Governor of the Territory of Hawaii.

ACT 152

Session Laws of 1925,

Territory of Hawaii

AN ACT to Amend Sections 391 and 398 of the Revised Laws of Hawaii 1925, Relating to Foreign Language Schools.

Be It Enacted by the Legislature of the Territory of Hawaii:

Section 1. Section 391 of the Revised Laws of Hawaii 1925, is hereby amended by substituting for the first paragraph thereof the following:

"Section 391. PERMITS, FEES. No foreign language school shall be conducted in the Territory unless under a written permit therefor from the department of public instruction nor unless the fee therefor shall have been paid as hereinafter provided. Nor shall such permit be issued unless such fee shall have been paid. Such permit shall be kept exposed in a prominent place at such school so as to be readily seen and read by visitors thereat.

"For the purposes of this chapter the school year shall be deemed to begin on September 1 of each year and to end on August 31 of the following year. After May 10, 1925, on or before the first day on which any foreign language school shall be conducted in any school year or unexpired part thereof, there shall be paid to the department for or in respect of conducting such school during such school year or unexpired part thereof a fee, the amount of which shall be computed as nearly as may be, at the rate of one dollar ($1.00) per pupil, on the estimated average attendance of

pupils at such school during the period during which such school was conducted in the next preceding school year or, if such school shall not have been conducted during any part of such preceding school year, then at the same rate on the estimated expected average attendance during the school year or unexpired part thereof in question, in which latter case the amount shall be adjusted to conform to the estimated average attendance during such year or part thereof by an addition to or subtraction from the fee payable for the next following school year. The amount of such fee shall be estimated and determined by the department from such information as it may have and shall be payable by any person, persons or corporation conducting or participating in conducting such school. All officers, all teachers, and all members of any committee or governing board of any such school, and, in case such school is conducted by or for a corporation or a voluntary association or other group of persons, all members or associates of such corporation, association or group, shall be deemed to be participants in conducting such school. Payment heretofore made for any school for the school year beginning September 1, 1924, or any part thereof of the fee which was provided for in this section before the passage of this amendment shall be deemed to be in full satisfaction of the fee required hereunder for such school for such school year or the unexpired part thereof.

"In case any such school shall be conducted at any time without such fee having been paid for conducting the same, the Territory may recover such fee in a civil action against any person, persons or corporation who

tory, or with the duty of disbursing moneys on account of the public service shall become and be "public accountants," and shall perform all such duties and render such accounts as this chapter prescribes, and as the treasurer and auditor shall from time to time direct. (L. 1898, c. 39, s. 29; R. L. s. 1515; R. L. 1915, s. 1384.)

Sec. 1444. PAYMENT TO TERRITORY UNDER PROTEST. Moneys representing a claim in favor of the Territory may be paid to a public accountant of the Territory under protest in writing signed by the person making such payment, or by his agent, setting forth the grounds of such protest, in which event the public accountant to whom such payment is made shall hold the money so paid for a period of thirty days from the date of payment.

Action to recover the money so paid, or proceedings to adjust the claim may be commenced by the payor or claimant against the public accountant to whom the payment was made, in a court of competent jurisdiction, within said period of thirty days, and in default of bringing such suit or proceedings within said period, the money so paid shall be by such accountant deposited in the Treasury of the Territory, and the same shall thereupon become a government realization.

If action to recover the money so paid under protest, or proceedings to adjust the claim, shall be commenced within thirty days after payment of the money under protest, the amount so paid shall be transmitted by the public accountant to the treasurer of the Territory who shall hold the same as a special deposit pending the

final decision of the cause. If the final decision of the cause shall be in favor of the claimant, the treasurer of the Territory shall pay to him out of such special deposit, such amount as shall have been adjudged to be due to him in such cause; the amount so to be paid to be ascertained by the treasurer from a certified copy of the judgment of the court, in which the cause was finally determined which shall be his authority and warrant for such payment. (L. 1907, c. 45, s. 1; R. L. 1915, s. 1392.)

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1926

No. 465

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,
Petitioners,

vs.

T. TOKUSHIGE, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITIONERS' BRIEF

WILLIAM B. LYMER,
Attorney General of the Territory of Hawaii.

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Attorneys for Petitioners.

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In the Supreme Court

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OCTOBER TERM, 1926

No.———

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,
Petitioners,

vs.

T. TOKUSHIGE, et al.,
Respondents.

BRIEF ON WRIT OF CERTIORARI

OPINIONS IN THE COURTS BELOW

The cause is before this court upon a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, made and entered in the case of Farrington vs. Tokushige. 11 F. (2d) 710, which said judgment affirms the order of the United States District Court for the Territory of Hawaii, made and entered in the case of Tokushige vs. Farrington, issuing a preliminary injunction (no written opinion, order appears, R. 129), en-

instances afterwards, and in still other instances both before and after, without vacation on Saturday and with very little vacation during the entire year, the resulting fatigue of the children, as well as the nationalistic type of instruction, seriously hampered the effective instruction of the child in the public schools (Survey, pp. 114, 127-130).

The Commission reached the conclusion (Survey, p. 134) that the Language Schools "are centers of influence which, if not distinctly anti-American, are certainly un-American."

Following this report, Act 30 of the Session Laws of 1920, the first of the Foreign Language School laws, was enacted.

This law (p. i, Appendix) provided that no one should conduct or teach in a Foreign Language School without a permit from the Department of Public Instruction. No fees were imposed but the applicant was required to give a pledge to observe the law and the regulations of the Department thereunder and to the best of his ability to direct the minds and studies of the pupils in such a way as would tend to make them good and loyal American citizens and not to instruct them in a way inconsistent therewith. Teachers were required to qualify in knowledge of ideals of democracy, American history and institutions and the English language, but the requirement as to English was to be liberally construed for a period of two years so as to afford sufficient time to qualify. Subject to modification by the Department, in case it should find that it could do so consistently with the object of the Act, the Foreign Language

Schools were not to hold sessions before or during the sessions of the public schools and, although the afternoon sessions might be longer than one hour, no pupil was to attend more than one hour a day nor more than six hours a week nor more than thirty-eight weeks a year. The Department was authorized to prescribe the courses of study and the text books but not to furnish books at its expense. The penalty for a violation of the Act was a fine not to exceed $25. In order to allow ample time for preparation, the Act was not to take effect until July 1, 1921, although enacted November 24, 1920.

Under this law certain regulations were passed by the Department of Public Instruction (R. 104). These regulations prescribed that up to September 1, 1923, pupils should have first satisfactorily completed the public school first grade or its equivalent and thereafter the first and second grades or their equivalent before attending a Foreign Language School; also that beginning September 1, 1923, and thereafter, for grades one, two and three, and beginning September 1, 1924, and thereafter, for grades four and above, all new text books used in elementary Foreign Language Schools should be based upon the principle that the pupil's normal medium of expression is English and should contain as far as practicable English equivalents for foreign words and idioms.

The statute having been contested in the Hawaiian court by some of the Japanese Language Schools and the Judge who tried the case having held that although the Act itself was valid, the regulations were

not, the Legislature thereupon in 1923 by Act 171 amended Act 30 of 1920 (Appendix, p. iv), in large part by incorporating in the act the substance of the regulations of the Department of Public Instruction at the same time enlarging the powers of the Department in the making of regulations (R. 104-105).

Also, in view of additional light which had been thrown on the whole situation, the Legislature deemed it advisable to provide and did provide for the appointment of one or more inspectors of the Foreign Language Schools; and, in order to provide the necessary funds for this and for other expenses in connection with the Foreign Language Schools, the payment of a license fee at the rate of $1 per pupil per school year (Sept. 1-Aug. 31) was required as a prerequisite to obtaining a permit, and all of the proceeds of the fees were appropriated for the expenses of carrying out the Act, but it was provided also that if the fees should yield more than was necessary for that purpose the Department might reduce them. In addition the schools were required to make annual reports to the Department, and it was provided also that if any part of the Act should be held unconstitutional or invalid that should not affect the validity of the Act as a whole or of any other part.

Finally the Legislature of 1925, because of the difficulties in collecting fees owing to the elusive nature of the Language Schools as being not only unincorporated associations but without constitutions or by-laws and of uncertain or unascertainable membership, enacted Act 152 (Appendix, p. x), amending

the provisions of the law relating to fees by providing that the fees should be payable by the schools whether they took out permits or not (the law previously having made the payment of a fee merely a prerequisite to obtaining a permit and the remedy merely a penal prosecution for conducting a school without a permit), by providing civil and penal remedies for their collection, and by prohibiting the issuance of injunctions against either civil or penal remedies as to the fees but providing also that the fees might be paid under protest and that action might be brought to recover them back if their validity should be questioned. This Act was not to become operative until the 10th of May.

Following the enactment of this last law the plaintiff schools closed for several weeks and then brought this suit in the United States District Court at Honolulu, June 13, 1925 (R. 94). Upon obtaining the temporary restraining order issued upon the filing of their suit, they then reopened and are now running.

Upon the hearing of the cause before the District Judge, after extended argument upon the motion to dissolve the restraining order and as a result of certain further proceedings in the cause, a temporary injunction was issued restraining the defendants from enforcing the various Acts in any of the modes enumerated in the court's order (R. 178). From that order the defendants appealed to the Circuit Court of Appeals for the Ninth Circuit (R. 149), where the judgment of the court was entered affirming the order of the District Court upon the ground

that the Foreign Language School laws of the Territory were unconstitutional and without the scope of the police power of the Territory. A petition to this court for a writ of certiorari was granted October 18, 1926, and the case is now set for hearing upon such writ.

A brief statement of additional facts on the situation in Hawaii, which has occasioned the Foreign Language School education and regulations, and of which we assume this court will take judicial notice, may prove helpful.

One of the most striking features of the population of Hawaii has long been its extremely mixed character in respect of varieties of races and crosses between races but quite as striking has been the extraordinary degree to which such races have dwelt and dealt with each other in amity and cooperation and to which there has been an absence of racial antagonisms. While American ideals have long been conspicuously dominant and the assimilability of such ideals by other races in general has been marked, there have nevertheless arisen as to the future citizenship of the Territory serious questions which have long been the subject of earnest thought and discussion. These questions have gradually centered mainly upon the Japanese element in the population owing to its great increase in numbers absolutely and relatively, its rapid and extensive change from foreign-born to native-born, the latter by reason of such birth being American citizens, and the disposition on the part of certain of the foreign-born to aloofness and racial assertiveness not only on their

own part but in their aggressive efforts to lead or force the native-born in the same direction. This has called for the laws and regulations in question, which are the result of the best thought of the higher types of the older foreign-born Japanese residents and of those American residents who are most sympathetic towards the Japanese and who are taking the chief interest in working out an amicable solution of the problems presented and which have the support of the greater number of the native-born Japanese who have become old enough to think upon these questions.

There are now in Hawaii 164 Foreign Language Schools of which 10 are Korean, 10 are Chinese and 144 are Japanese (R. 111). They have about 400 teachers and, as the plaintiffs allege (R. 15), the Japanese Language Schools alone have about 20,000 pupils. As they also allege (R. 13-14), the members of the unincorporated associations conducting the schools and their teachers and the parents of the pupils are in general Japanese subjects, while as shown by the affidavit just referred to (R. 112), the pupils themselves are practically all American citizens by reason of birth within the United States—the percentage of those who are American citizens being constantly on the increase and the more so in the lower grades. When the Japanese Schools began not only were their pupils very few, but the majority of them were Japanese citizens. Now, not only are they very numerous, but nearly 99 per cent of them are American citizens. In 4 of the Chinese, 7 of the Korean and 65 of the Japanese Language Schools

there is not a single alien pupil. All of the 10 Korean, the 10 Chinese and 58 of the Japanese Language Schools have paid their fees as required by the statute and all of the Foreign Language Schools, including even the plaintiff schools, are complying with some and in many instances with all of the other provisions of the statutes (R. 111).

The Japanese began to be introduced into Hawaii as laborers in appreciable numbers in 1885 and from then until the establishment of Territorial Government in 1900 about 70,000 were so introduced—under appropriate restrictions of the Kingdom and Republic of Hawaii. Most of these were unmarried or, if married, did not bring their wives, and few children were born. Many returned sooner or later to Japan. Then immigration control passed to the United States and from 1901 to 1907 under the more liberal Federal laws about 40,000 Japanese immigrants arrived in the Territory, many of whom as well as many of those who had previously arrived went to California in such numbers as to arouse sentiment there to such an extent as to bring about the "Gentleman's Agreement" of 1907, since when the departures of Japanese from Hawaii have approximated arrivals, but the arrivals have been largely "picture brides" (now stopped by the Immigration Act of 1924) and wives of Japanese already in Hawaii, and this fact coupled with the fact that the Japanese in Hawaii became more settled in their residence by reason of the adoption of the "Gentleman's Agreement" resulted in a tremendous increase in the native-born Japanese population, the foreign-born remaining al-

most constant. The Japanese population in Hawaii increased from 116 in 1885 to 109,274 in 1920 (128,068 out of a total population of 306,551, exclusive of army and navy personnel numbering 17,094 in 1925); the native-born Japanese, from 4,855 in 1900 to 48,586 in 1920 (70,860 in 1925); and the foreign-born, from 56,256 in 1900 to 60,688 in 1920 (57,208 in 1925). The Japanese pupils in the public and equivalent private schools (exclusive of the Foreign Language Schools) increased from 1,352 in 1900 to 19,354 in 1920 (30,487 out of a total of 65,369 pupils of all races on Dec. 31, 1924). Practically all of the children who attend the Foreign Language Schools attend also the public or equivalent private schools (R. 112). The plaintiffs also allege this (R. 49). The foregoing population figures, except for 1925, are taken from the census reports; those for 1925 are from the official estimate of the Board of Health based on the 1920 census and the official statistics of births and deaths and arrivals and departures since. The pupil figures are from the official reports of the Department of Public Instruction.

The "Survey" above referred to sets forth the history of these schools to some extent and shows that as early as 1915 as a result of the prominence into which the problem of the Japanese Language Schools from the American standpoint had already come, the Japanese Educational Association composed of teachers of the Japanese Language Schools, caused the text books (which were the official text books published and used in Japan) to be revised, by a Japanese professor brought from Japan for the purpose,

so as to introduce into them more or less pertaining to the United States and to Hawaii by omitting some of the chapters and substituting others, so that thereafter the subjects covered were partly Japanese and partly American—including more or less of American history, institutions and ideals. The "Survey" shows also, in Chapter III above mentioned and on pages 379-403 of its Appendix, the subjects covered in these text books at the time of the passage of the first of the Foreign Language School laws in 1920 (and still used in the litigating schools) and the tendency of the foreign-born teachers in these schools to teach the pupils to look to Japan as their country, to the Emperor of Japan as their sovereign and to the Japanese language as their language, and especially as under Japanese law the children, though born in America, were deemed to be Japanese citizens, while by American law they were American citizens. To some extent the teachers straddled by teaching loyalty to both countries—on the theory of dual citizenship. One of the leaders among the principals of the Japanese Language Schools is quoted at page 114 as saying in an address to the Japanese Educational Association: "Any man who is to teach Japanese language schools should not be a man with democratic ideas. The language school is not a place for a man with strong democratic ideas. A man of strong Japanese ideas should be its teacher." Instruction in the Japanese language in these schools hampered effective instruction in the English language in the public and equivalent private schools, especially among the younger pupils. These schools,

moreover, held their sessions before and after the sessions of the public schools,—a session in some schools lasting as long as 2½ hours, the pupils attending in some instances the morning session, in other instances the afternoon session and in other instances both sessions; and the schools were in session Saturdays as well as other days and nearly the entire year with very little vacation ("Survey", p. 114). Naturally the children became so fatigued as to handicap seriously the work in the public schools and equivalent private schools. The effect upon the health of the pupils, upon the efficiency of the work in the public schools and equivalent private schools and upon the loyalty of the pupils to America is set forth, with much expert testimony, on pages 125-133 of the "Survey". The "Survey" and much else was before the Legislature when it passed Act 30 in 1920.

A bill had been introduced in the 1919 Session of the Legislature to abolish the Foreign Language Schools but the Legislature refused to pass it. Between that session and the Special Session of 1920 much attention was given to this subject by the Chamber of Commerce of Honolulu and other bodies as well as individuals, and various bills of a regulatory as distinguished from a prohibitory nature were drafted. Then finally the more progressive leaders among the Japanese, including the President and Secretary of the Japanese Chamber of Commerce, the Bishop of the principal Buddhist sect, the principals of Japanese Language high and grade schools, Christian, Buddhist and independent teachers, professional men, including doctors and min-

isters, bankers and business men, drafted a bill and proposed its enactment—with the result that other proposed legislation, some of it of a more radical nature, was abandoned and the bill proposed by the Japanese was enacted November 24, 1920, as Act 30 —the first of the laws now in question.

Following this enactment in January, 1921, courses of lectures were given by specially qualified persons to the Japanese Language School teachers on ideals of democracy and American history and institutions and these were published in both Japanese and English in little books which were distributed throughout the Territory, and the examinations of applicants for permits to teach have ever since been based upon these books. The result of the first examinations, held in July, 1921, was that far more applicants received permits to teach than there were positions to be filled. At the time of the hearing of the motion for a preliminary injunction in this case there were outstanding 609 permits to teach, of which upwards of 500 were for teachers in the Japanese Language Schools (R. 112) as compared with a total of about 300 teachers alleged by the plaintiff schools to be employed in the Japanese Language Schools (R. 15). The number having permits would be much larger but for the fact that in 1923 and 1924 many who would otherwise have taken the examinations were induced to refrain from doing so. Since the hearing on the motion for a preliminary injunction in this case about 100 additional applicants have taken their examinations. All or practically all of the Foreign Language Schools and their teachers observed all of

the provisions of Act 30 until the end of 1922 and since then many have continued to observe all the provisions and the others have continued to observe some of the provisions, such as that in regard to sessions and attendance. (R. 48, 111.)

In 1922 a joint committee of specially qualified persons from the University, from the public schools, from equivalent private schools and from the Japanese Language Schools, the members of the latter group being selected, at the request of the Department, by the Japanese Consul General, was appointed to revise the text books in conformity with superior pedagogical principles and for the purpose of further Americanizing them and correlating them with the study of English in the public and equivalent private schools. This joint committee after investigation and discussion with reference not only to the health of the younger children and the learning of the English language in the public schools, but also the learning of the foreign languages in the Foreign Language Schools, made recommendations to the Department which were embodied in regulations adopted November 18, 1922, and approved by the Governor and published with explanatory statements. These regulations prescribed that up to September 1, 1923, pupils should have first satisfactorily completed the public school first grade or its equivalent and thereafter the first and second grades or their equivalent before attending a Foreign Language School; also that beginning September 1, 1923, and thereafter, for grades one, two and three, and beginning September 1, 1924, and thereafter, for

grades four and above, all new text books used in elementary Foreign Language Schools should be based upon the principle that the pupil's normal medium of expression is English and should contain as far as practicable English equivalents for foreign words and idioms. It was believed also that as much, if not more, could be accomplished in six years with the improved text books as in eight years with the old text books.

The Department caused such improved text books to be prepared for the grades above the second by a number of prominent and highly qualified teachers in the Japanese Language Schools under the supervision of the Territorial Supervisor and, although the plaintiffs claim (R. 96) that such text books contained many errors, that was true only of the first edition. The books were thoroughly revised so as to be reasonably free from errors and have long been in use in a large number of the Japanese Language Schools—to the satisfaction of the teachers, parents and children alike and have proved to be more valuable than the text books formerly used in such schools and still used in most if not all of the litigating schools, and have greatly increased the interest of all in the teaching and studying of the Japanese language in the schools which use them. The fact is that it is difficult to avoid errors in Japanese books, and the books prepared for and used in the litigating schools not only contain errors but are pedagogically of inferior quality as well as less suitable in context matter for pupils who are American citizens. (R. 118.) The Department has since caused improved

text books for the first and second grades to be prepared for the opening of the school year beginning in September, 1925, as planned (R. 67), and on June 1, 1925, by the regulations now complained of (R. 66) practically abolished the requirement that pupils should have completed the first and second grades in the public or equivalent private schools before attending the Foreign Language Schools by providing that that requirement should not apply to those schools which used text books approved by the Department—the Department having carefully studied the results during the two years since that requirement had been enacted and come to the conclusion that it could be relinquished without undue disadvantage in the cases of all schools which used the improved text books.

ASSIGNMENT OF ERRORS

The petitioners herein rely particularly upon the assignment of error made in the Circuit Court of Appeals and here repeated, that the Foreign Language School Acts of the Territory are constitutional.

"1.

"Said Judge erred in so enjoining or causing to be enjoined the plaintiffs, notwithstanding that said Acts and regulations and the several provisions thereof are constitutional and valid, and in not holding that the same are constitutional and valid as to each of said provisions." (R. 155.)

II.

The court erred in declaring the entire statute unconstitutional without regard to

the fact that the various provisions thereof were independent of each other.

ARGUMENT

I

THIS COURT WILL TAKE JUDICIAL NOTICE OF THE SITUATION LEADING TO THE FOREIGN LANGUAGE SCHOOL LEGISLATION.

The references to Bulletin 1920, Number 16, issued by the Commissioner of Education, as well as to facts concerning the large proportion of foreigners, have been fairly referred to, we believe, upon the theory that the court will take judicial notice of the reports, and of the facts underlying the Foreign Language School situation in Hawaii.

This Court took judicial notice:

Of the situation of the citrus fruit interest in Florida; Sligh v. Kirkwood, 237 U. S. 52 at 61;

Of the live stock business of New Mexico; McLean v. Denver & Rio Grande Railroad Co., 203 U. S. 38 at 51;

And of the financial condition of the country following the war; Galveston Electric Co. v. Galveston, 258 U. S. 388, 66 L. Ed. 678.

The Hawaiian Supreme Court has done the same with reference to labor and immigration:

In Re Craig, 20 Haw. 483, 492.

This Court has taken judicial notice of the Report of the Secretary of War; Tempel v. United States, 248 U. S. 121, 63 L. Ed. 162;

Of the regulations of the Department of Agriculture; Thornton v. United States, Adv. Ops. No. 255, decided June 1, 1926;

And of the regulations of the Department of the Interior; Caha vs. United States, 162 U. S. 211, 38 L. Ed. 415.

II

THE FOREIGN LANGUAGE SCHOOL LAWS OF HAWAII DO NOT VIOLATE THE CONSTITUTION NOR DO THEY FALL WITHIN THE ACTUAL DECISIONS OF THIS COURT IN THE RECENT NEBRASKA, IOWA AND OREGON CASES.

The great question before this court is whether or not the legislation here concerned falls within the actual decisions of this court in Pierce v. Society of Sisters of Holy Names, 268 U. S. 510, Meyer v. Nebraska, 262 U. S. 390, and Bartels v. Iowa, 262 U. S. 404. The Circuit Court of Appeals held that the decisions in those cases govern the case at bar. The petitioners herein contend that those cases govern prohibitory legislation alone and not purely regulatory legislation such as has been adopted by the Legislature of Hawaii which attempts rather to supervise and control than to abolish Foreign Language Schools.

The petitioners herein feel that the decisions of the court in Meyer v. Nebraska and Bartels v. Iowa support rather than militate against the constitutionality of the Hawaiian legislation relating to Foreign Language Schools.

The Nebraska statute absolutely prohibited (1) the teaching of any subject in any language other than the English language in any school, public or private, and irrespective of the age or stage of de-

velopment of the pupils or students, and (2) the teaching of any language as such, whether the teaching of it was in that language or in the English language, to any pupils whether in public or private schools until the pupils should have successfully passed the 8th grade, that is, should have been prepared to enter the high school. The Iowa and Ohio statutes were of a similar nature. Those Acts thus absolutely prohibited the teaching of any subject in a foreign language at any time and any foreign language until after the primary and grammar grades, and in effect abolished a large group of schools altogether. The Acts now in question do not prohibit the teaching of foreign languages at all nor do they at all prohibit the teaching of those languages in the languages themselves, nor do they in effect abolish any schools or even handicap them in any way to which exception can be taken. The decision in the second case, Bartels v. Iowa, covering the Iowa and Ohio statutes, merely follows the decision in the first case, Meyer v. Nebraska, and the dissenting opinion of Justices Holmes and Sutherland in both cases is found at page 412 in the second case. The reasoning of the majority of the court is found in the first case. The majority opinion itself recognized the object of the Act to be praiseworthy but held that the legislature undertook to accomplish it in a wrong way—that being a prohibitory as distinguished from a regulatory statute and the occupation being one which was useful in itself and therefore subject only to regulation. The Court said on pages 400, 402:

"The challenged statute forbids the teaching

in school of any subject except in English; also the teaching of any other language until the pupil has attained and successfully passed the eighth grade, which is not usually accomplished before the age of twelve. . . ."

"The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefor in time of peace and domestic tranquility has been shown. . . ."

"Our concern is with the prohibition approved by the Supreme Court. Adams v. Tanner, supra, p. 594, pointed out that mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper. No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed. We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the State."

In these passages the Court shows the real basis of its decision—that the Act was one of "abolition"; and it distinctly states that "regulation may be entirely proper". Then, apparently in order to insure

that it would not be misunderstood, it went further in other parts of the decision and said much more that would justify the legislation now in question as follows, on pages 400, 401, 402:

> "The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted. The Ordinance of 1787 declares, 'Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged'. Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the States, including Nebraska, enforce this obligation by compulsory laws.
>
> "Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. . . ."
>
> "That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. . . ."
>
> "The power of the State to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. . . ."

In the Oregon case of Pierce v. Society of Sisters of Holy Names, 268 U. S. 510, the Act, as a prohibitory act, went even further than the acts of Nebraska,

Iowa and Ohio. It prohibited attendance of children between the ages of eight and sixteen years at any school other than a public school during the portion of the year in which the public schools were in session in the respective districts in which the children resided, except in special cases in which the children were not normal or had completed the eighth grade or resided at considerable distances from any public school, etc. The State Court was not called upon to pass upon the validity of the Act, but its invalidity was so patent that doubtless that court would have held it unconstitutional. The lower Federal Court as well as the Federal Supreme Court unanimously held it invalid. But, in this case also as in the Nebraska case, the court evidently did not wish to be misunderstood and hence it said, on page 534:

> "No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."

It would seem as if nothing more could be desired in order to support the Acts in question than these opinions of the Federal Supreme Court. It would indeed, we submit, be a sad commentary on our system of government as well as a shock to our common sense to hold that the Territory must stand by impotently as a mere onlooker and watch its foreign-born

guests conduct a vast system of schools of American pupils—keeping these infants at it from dawn to dusk before and after the public school hours, teaching them loyalty to a foreign country and disloyalty to their own country, and hampering them during their tender years in the learning of the home language in the public schools; to hold that the Territory could not by mere regulatory measures even alleviate these evils to a moderate extent while not interfering in the least with the proper maintenance of these schools or the teaching of foreign languages in them, but on the contrary making them more efficient for this their declared main object. And yet this is the substance of the plaintiffs' contention—in the face of the pronouncements of the highest court in the land that the American people have always regarded education as a matter of supreme importance; that religion, morality and knowledge are necessary to good government and the happiness of mankind and hence justify the encouragement of schools and the means of education; that compulsory educational laws are justifiable; that education of the young is possible only in schools conducted by especially qualified persons; that the State may go very far in order to improve the quality of its citizens physically, mentally and morally; that it may compel attendance at some school and make reasonable regulations for all schools and even require the teaching of English; that it may reasonably regulate all schools and inspect, supervise and examine them, their teachers and pupils; that it may require all children of proper age to attend some school; that teachers shall be of good moral character and patri-

otic disposition; that certain studies plainly essential to good citizenship be taught and that nothing be taught which is manifestly inimical to the public welfare. The justification of the establishment and maintenance of the public school system is the future general welfare of the state as well as the welfare of the persons immediately concerned who are not fully *sui juris;* and that is the justification of the legislation now in question. It is of course immaterial that the criticism of these schools is not equally applicable to all of them or not at all applicable to some of them—especially at the present time. The general situation is what must be considered and that too at the time of the passage of the legislation or as it might be now but for the legislation.

The main fallacies of the argument that the Foreign Language School legislation is beyond the police power of the Territory lie in the assumptions that the police power extends only to the public health, safety and morals, using those words in an extremely limited sense, and that the Foreign Language Schools are to be regarded merely as business enterprises—mainly from the standpoint of the proprietors. The truth is of course that either the words "public health, safety and morals" as thus used must be taken in a very comprehensive sense or else that the police power must be held to extend beyond them so as in any event to cover the general welfare, prosperity and convenience. Of course also the Foreign Language Schools are not to be regarded merely as business enterprises. The state has authority in regard to such schools other than as mere businesses

for at least two reasons: (1) that as *parens patriae* it has extensive power with respect to infants which it does not have with respect to adults, and (2) that it is vitally interested in the quality of its citizenship, whether this be regarded as a matter of public health, safety and morals or a matter of public welfare. Even other businesses require different treatment as among themselves.

On the extent of the police power, Sligh v. Kirkwood, 237 U. S. 52, is perhaps the leading case. An Act of the Florida legislature prohibiting the sale or shipment of citrus fruits which were immature or otherwise unfit for consumption was upheld as a proper exercise of the police power for the purpose of protecting the reputation of the State in foreign markets and thus promoting a leading industry of the State (and notwithstanding that it incidentally affected interstate commerce). Opposing counsel in the case at bar have contended in the Territorial courts that the decision in the Sligh case was to be explained on the theory that the legislation was for the public health. Counsel on one side, it is true, in that case based one of their arguments on that ground, but counsel on the other side pointed out that it had no application because the public health, if any, in question, was not that of the people of the State which enacted the law, but was that of people outside of the State to whom the citrus fruits were to be exported, and the Federal Supreme Court based its decision squarely on the proposition that the police power extends "not only to regulations which promote the public health, morals and safety,

but to those which promote the general convenience or the general prosperity," and justified the law on the ground that "the protection of the State's reputation in foreign markets with the consequent beneficial effect upon a great home industry may have been within the legislative intent, and it certainly could not be said that this legislation had no reasonable relation to the accomplishment of that purpose." On the extent of the police power the Court said, on pages 58 and 59:

> "The limitations upon the police power are hard to define, and its far-reaching scope has been recognized in many decisions of this court. At an early day it was held to embrace every law or statute which concerns the whole or any part of the people, whether it related to their rights or duties, whether it respected them as men or citizens of the state, whether in their public or private relations, whether it related to the rights of persons or property of the public or any individual within the state. New York v. Miln, 11 Pet. 102, 139. The police power, in its broadest sense, includes all legislation and almost every function of civil government. Barbier v. Connolly, 113 U. S. 27. It is not subject to definite limitations, but is co-extensive with the necessities of the case and the safeguards of public interest. Camfield v. United States, 167 U. S. 518, 524. It embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or the public health. Chicago &c. Railway v. Drainage Commissioners, 200 U. S. 561, 592. In one of the latest utterances of this court upon the subject, it was said: 'Wheth-

er it is a valid exercise of the police power is a question in the case, and that power we have defined as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity. . . . And further, 'It is the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government.' Eubank v. Richmond, 226 U. S. 137, 142."

And on page 61:

"Furthermore, this regulation cannot be declared invalid if within the range of the police power, unless it can be said that it has no reasonable relation to a legitimate purpose to be accomplished in its enactment; and whether such regulation is necessary in the public interest is primarily within the determination of the legislature, assuming the subject to be a proper matter of state regulation.

"We may take judicial notice of the fact that the raising of citrus fruits is one of the great industries of the State of Florida. It was competent for the legislature to find that it was essential for the success of that industry that the reputation be preserved in other States wherein such fruits find their most extensive market. The shipment of fruits, so immature as to be unfit for consumption, and consequently injurious to the health of the purchaser, would not be otherwise than a serious injury to the local trade, and would certainly affect the successful conduct of such business within the State. The protec-

tion of the State's reputation in foreign markets, with the consequent beneficial effect upon a great home industry, may have been within the legislative intent, and it certainly could not be said that this legislation has no reasonable relation to the accomplishment of that purpose."

See, in general, chapter on "The Police Power" in Brannon on "The Fourteenth Amendment."

That, in the exercise of the police power, the legislature may go much further in the case of infants than in the case of adults, and even, as between adults, in the case of women than in the case of men, and that, with respect to both infants and women, it may do so both in the interests of the persons immediately concerned and in the interests of the public with a view to the future welfare of the state, see, on subjects other than education: Muller v. Oregon, 208 U. S. 412; Sturges & Burn v. Beauchamp, 231 U. S. 329; Riley v. Massachusetts, 232 U. S. 671; State v. Shorey, 48 Oregon, 396 (86 Pac. 881); People v. Ewer, 141 N. Y. 129 (36 N. E. 4); Commonwealth v. Wormser, 260 Pa. St. 44 (103 Atl. 400).

As is well known, there are two classes of occupations with reference to legislative control: (1) those which may be regarded as harmful in themselves, such as selling liquor, conducting lotteries, etc., and which may be absolutely prohibited, (2) those which are regarded as useful and harmless in themselves, but which may be regulated not only for purposes of public health, safety and morals strictly speaking, but also for purposes of general welfare. Of course the power to regulate is not without limitations. The legislature cannot prohibit occupations of the

latter class under the guise or subterfuge of regulation or make what might be proper regulations in kind so severe that they would in effect be prohibitory; nor can the regulations be purely arbitrary or unreasonable—as by providing that no one shall teach in a Japanese Language School unless he has blue eyes or that no more than three teachers shall be employed in any one school. The object must be a proper one and the means must have some proper relation to the object. There is, however, no third class of occupations which is sacrosanct or above or beyond the law. The king may be above the law under certain forms of government; but in a democracy or republic like ours no individual and no occupation is above the law. Occupations may vary in the extent to which they may be regulated or controlled, but none is free from the power to regulate insofar as the circumstances warrant, and the legislature is the sole judge as to this so long as it acts within constitutional limitations. An act may go far in prohibitory form and yet be regulatory. McCluskey v. Tobin, 252 U. S. 107.

> "The requirement by the state of a license is not restricted to businesses or occupations which are immoral, vexatious, or injurious to society, but extends to all occupations, except where the power of the state to exact the license is expressly limited by the constitution of the United States or by the constitution of the state itself." 25 Cyc. 613.

Beginning on the next page (25 Cyc. 614) a long list is given of occupations which have been the subject of statutory regulations upheld by the courts.

Not infrequently when a law is passed to meet a new situation that has developed, legal minds—steeped in tradition, precedent and conservatism—are apt at first to question it—even though time may prove it to be merely a new application of old principles. See article in American Bar Association Journal, February, 1925; p. 112. We have become so used to licenses and regulations of other professions and businesses that we take their validity as a matter of course. We have elsewhere enumerated many such covered by Hawaiian statutes.

That regulation, as distinguished from prohibition, many extend to all occupations and professions, is shown by the following statement in Gundling v. Chicago, 177 U. S. 183 at 188:

> "Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business or occupation they shall apply, are questions for the State to determine, and their determination comes within the proper exercise of the police power by the State, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the State to pass, and they form no subject for Federal interference." Quoted in In Re Craig, 20 Haw. 483 at 495.

And in Adams v. Tanner, 244 U. S. 590, in which the statute, relating to employment agencies, was

held invalid on the ground that it was of a prohibitory nature (as the court said at p. 593, "The statute is one of prohibition, not regulation"), the court distinguished (p. 596) "between the useful business which may be regulated and the vicious business which can be prohibited" and stated that between these there lie "occupations, which may or may not be harmful to the public, according to the local conditions, or the manner in which they are conducted," and said, with reference to occupations which were not *per se* harmful, at page 594:

> "Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way."

And, as to what businesses might be regulated, it continued:

> "Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices. . . ."

Among the numerous cases upon statutes of this general character—the licensing of professions and occupations—the following are selected as particularly satisfactory in their statement of the reasons in support of the validity of such statutes:

Dent v. West Virginia, 129 U. S. 114;

Ex Parte McManus, 151 Cal. 331;

See also Mutual Film Corp. v. Ohio Indus'l. Comm., 236 U. S. 230.

That the legislation in question cannot be branded

as arbitrary or unreasonable is, we submit, clear. This is not a question of whether A or B or C or the Court may disagree with the Legislature on the question of advisability or policy or reasonableness; it is a question of whether the legislation is arbitrary or unreasonable in the established legal sense. It is very much like the question which is sometimes presented to a court upon the verdict of a jury. It makes no difference how much the court may differ with the jury as to what the verdict should have been upon the evidence. The question is merely whether there is any evidence upon which the jury might pass. The rules governing decisions of the courts in matters of this kind are thus summarized in Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, at page 78:

> "The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these: 1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest

upon any reasonable basis, but is essentially arbitrary."

In Rast v. Van Deman & Lewis Co., 240 U. S. 342, at page 357, the court said:

> "It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety . . . It is the duty and function of the legislature to discern and correct evils, and by evils we do not mean some definite injury but obstacles to a greater public welfare."

In Crescent Oil Co. v. Mississippi, 257 U. S. 129, the court said at page 137:

> "Every state of facts sufficient to sustain such classification which can be reasonably conceived of as having existed when the law was enacted will be assumed."

In Armour & Co. v. North Dakota, 240 U. S. 510, at page 513, the court said:

> "We said but a few days ago that if a belief of evils is not arbitrary we cannot measure their extent against the estimate of the legislature, and there is no impeachment of such estimate in differences of opinion, however strongly sustained. And by evils, it was said, there was not necessarily meant some definite injury but obstacles to a greater public welfare. Nor do the courts have to be sure of the precise reasons for the legislation or certainly know them or be convinced of the wisdom or adequacy of the laws."

In Ward & Gow v. Krinsky, 259 U. S. 503, the court said at 520:

"The legislature, in the New York system, is justified in extending the benefits of the Compensation Law as far as it reasonably may determine occupational hazard to extend—to the vanishing point, as it were—and any lines of group definition it may adopt, if easily understood and applied, cannot reasonably be called 'an empty form of words' merely because they do not carry on their face the reasons for adopting them."

And at 521:

"No case that we recall illustrates more aptly or forcibly the wisdom of that familiar rule, expressed by this court in a recent case in these terms: 'There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds.'" And at 522:

"What was it they were aiming at, and how did they work to accomplish it? We need not be sure of hitting upon a correct, much less a complete, explanation. Upon the general presumption referred to, the questioned group must stand, unless it were demonstrated to a moral certainty, beyond a reasonable doubt, that the grouping could not possibly be explained on reasonable grounds."

See also Territory v. Takanabe, 28 Haw., 43, 45-6, citing Patsone v. Pennsylvania, 232 U. S. 138, 144.

We need not cite additional and more general cases in support of the general rule that every presumption should be made in support of the constitutionality of an Act of the legislature—a rule often applied

by this Court. The foregoing cases not only go to that point but also show the extent of the police power, the extent to which the legislature may go in classification, and the extent to which questions of this sort are for the legislature and not for the courts.

That private schools are a proper subject of regulation would seem to go without saying. In 24 Ruling Case Law 621 the validity of compulsory attendance at schools is recognized, and upon the ground that the control of the parent must yield to that of the state both for the benefit of the state and the benefit of the pupil, within, of course, proper limitations. In State v. Bailey, 157 Ind. 324, at page 329, the Court said:

> "The welfare of the child, and the best interests of society require that the State shall exert, its sovereign authority to secure to the child an opportunity to acquire an education. Statutes making it compulsory upon the parent, guardian, or other person having the custody and control of children to send them to public or private schools for longer or shorter periods, during certain years of the life of said children, have not only been upheld as strictly within the constitutional power of the legislature, but have generally been regarded as necessary to carry out the express purposes of the Constitution itself."

Compulsory education statutes do not require attendance at public schools alone, but at either public or private schools. Necessarily, in order to meet the requirements in respect of the period of years and

the field of knowledge to be covered, it must be within the power of the legislature to regulate within reasonable limits the qualifications of the teachers, the subjects to be covered, the instruction to be given and how and to what extent,—whatever the limitations may be as to the power to prohibit the giving of other instruction. The right to regulate private schools in Hawaii has long been unquestioned. For instance, Sec. 29 of the Act of July 10, 1865, provided that private schools might be established "provided they be not of an immoral tendency. The teachers of such schools shall annually report to the Board of Education the number of their scholars, by what means supported, and the general character and condition of their respective schools." We call special attention to the laws now in force in Hawaii relating to private schools in general, particularly those in R. L. 1925, Secs. 313-315 (Appendix xvii), which are made up of part of an Act of 1896 and subsequent amendments and which in some respects resemble those now in question relating to the Foreign Language Schools. And most of the provisions of the latter laws have already been held valid by one or more of the Territorial Circuit Court judges.

The recent decisions of the Federal Supreme Court in the Nebraska and Oregon cases are not the first expression of that Court on the subject of school legislation. For instance, in Barbier v. Connolly, 113 U. S. 27 at 31, the Court said:

> "But neither the (14th) amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the

power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."

In Interstate Railway Co. v. Massachusetts, 207 U. S. 79, at 87, the Court said:

"Education is one of the purposes for which what is called the police power may be exercised. Barbier v. Connolly, 113 U. S. 27, 31. Massachusetts always has recognized it as one of the first objects of public care. It does not follow that it would be equally in accord with the conceptions at the base of our constitutional law to confer equal favors upon doctors or workingmen, or people who could afford to buy 1000-mile tickets. Structural habits count for as much as logic in drawing the line."

Thus showing that the legislature may go further in some respects as to the education of children than it can go even as to doctors and others—and that, too, in a matter only indirectly affecting education. That case went up from Massachusetts where the Act (requiring street railways to carry school children at half fare) was upheld by the Supreme Court of that State as well as by the Federal Supreme Court, but had to do only with children who attended the public schools. Later the law was amended so as to extend to the children of private schools, even including evening schools, and was upheld by the Supreme Court of Massachusetts,—in Commonwealth v. Boston & Northern St. Ry., 212 Mass. 83.

III.

THE LEGISLATION WAS NOT PROMPTED BY MOB-PSYCHOLOGY.

The Foreign Language School Acts of Hawaii were not prompted by any mob-psychology as opposing counsel has heretofore urged and, as was the case in the Nebraska, Iowa and Ohio school cases, nor are they the outcome of anything in the nature of Ku Klux Klanism, which produced the Oregon law. One of the indicia of mob-prejudice is its fugitive nature. The Hawaiian law was not the result of a passing prejudice, but of a firmly established policy developing naturally from an extremely difficult situation presented by the numerical dominance of alien races in Hawaii, and based, not merely upon a thorough study by a Commission acting under the authority of the Federal Commissioner of Education, but upon the results of conferences and cooperative action between the leading Americans of the community and the leading foreigners.

That the legislation represents a fundamental policy of the Territorial government appears from the fact that the laws are not the product of one legislature, but of three sessions at intervals of two years each, amending and developing the law as their understanding of the situation grew from a practical application of the acts and regulations.

Moreover, the legislature of the Territory of Hawaii expressed itself unequivocally as intending that the various provisions of the law should be considered as independent of each other when it provided in

Section 9A of Act 30, S. L. 1921, as amended by Section 6, Act 171, S. L. 1923:

> "If any section or part of this Act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the Act as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid."

IV.

EVEN IF ONE OR MORE OF THE PROVISIONS OF THE FOREIGN LANGUAGE SCHOOL ACTS BE UNCONSTITUTIONAL, THE REMAINDER OF THE ACT, IF FOUND CONSTITUTIONAL, SHOULD BE DECLARED VALID.

One section of a statute may be repugnant to the Constitution without rendering the whole Act void and in a like manner one provision of a section may be invalid by reason of its not conforming to the Constitution, while all the other provisions may be subject to no constitutional infirmity. The only question to be considered in such case is whether such provisions, the constitutional and the unconstitutional, are so interdependent that one cannot operate without the other.

Berea College v. Kentucky 211 U. S. 45.
Pollock v. Farmers' Loan & Trust Co. 158 U. S. 601.
Reagan v. Farmers' Loan & Trust Co. 154 U. S. 362.

It is respectfully urged that in this case, if this court shall determine that the Circuit Court of Appeals was correct in holding one or more of the provisions of the Foreign Language School laws invalid

as repugnant to the Constitution, it should yet sustain such provisions of the law as do not fall within the constitutional prohibitions.

The provisions of the Acts are not essentially inter-dependent. That is shown by the growth of the law, one or two provisions being contained in the first enactment and others being added or the original ones modified from time to time as experience suggested new manners of dealing with the situation.

The Legislature particularly called upon the courts to preserve the statute even though some portions be declared unconstitutional when it provided (R. 66) that if any section or part of a law be held unconstitutional or invalid that such decision should not affect the validity of the law as a whole, but that any part thereof which could be given effect, should be administered.

The purpose of the Language School legislation, as amended, (R. 62) is to regulate the conducting of Foreign Language Schools and the teaching of foreign languages "that the Americanism of the pupils may be promoted." Therefore, if any one of the specific provisions of regulation be valid, it is submitted that the purpose of the statute is to that degree subserved, and should not fall even if another section or sections may be declared unconstitutional in the event that this court should not find the entire statute valid. In other words, if the provision relating to the inspection of the schools is good, that is in some degree a service toward the end intended by the statute. In a like manner, if the provisions requiring the use of the supervised text books or of a text

book in which it is recognized that the normal medium of expression of the pupils is English, are preserved, that is sufficient to uphold the statute. Again, if the regulations concerning the attendance of the students is upheld, it has some bearing, however slight, upon the promotion of the Americanism of the pupils. This is peculiarly true of the regulation of the teachers and the issuance of permits, for the assurance that the teachers have an understanding of English and of the knowledge of American institutions and of the background of American history and ideals is in a large degree a guaranty that the students would not be instructed in any manner that may be a pernicious influence upon their duties and responsibilities as American citizens. So that if any one of these particulars of the statute be upheld, the statute itself should stand even though other particulars should be held by this court to be invalid.

V.

SPECIFIC PROVISIONS OF THE ACTS.

Permits and Pledges. Section 391 forbids conducting, and Sec. 392 teaching in, a Foreign Language School without a permit from the Department of Public Instruction. Section 394 requires as a condition of obtaining such a permit, whether for conducting or teaching, that the applicant pledge himself to observe the terms of the law and regulations and to the best of his ability so direct the minds and studies of the pupils as will tend to make them good and loyal American citizens and not to instruct or permit instruction in any way inconsistent there-

with. Sec. 391 requires also, as a condition of obtaining a permit to conduct a school, the payment of the fee; and Sec. 393 requires, as a condition of obtaining a permit to teach, that the applicant shall satisfy the Department that he is possessed of the ideals of democracy, knowledge of American history and institutions and knows how to read, write and speak the English language.

We may add that in no event could the plaintiff schools complain on behalf of the teachers or as to the provisions relating to the teachers, for they are not the parties hurt by those provisions. In re Craig, 20 Haw. 483, 489-490; Territory v. Field, 23 Haw. 230, 232-3; Milton Dairy Co. v. Great Northern Ry. Co., 124 Minn. 239 (144 N. W. 764); Northern Pacific Railroad v. Whalen, 149 U. S. 157, 162; Mutual Film Corp. v. Kansas, 236 U. S. 248, 257-8; McCabe v. A. F. & S. F. Ry. Co., 235 U. S. 151, 162-3; Davis & Farnum Mfg. Co. v. Los Angeles, 189 U. S. 207, 218-9. As well might a hospital maintain a suit to enjoin the enforcement of an act to license physicians—because they employ physicians. Furthermore, it is probable that those teachers who have availed themselves of the law and taken out permits, have waived the right to question the constitutionality of the legislation.

The issuance of a permit, which is in the nature of a license, is mandatory on the part of the Department provided the applicant has complied with the prescribed conditions (in re Kalama, 22 Haw. 96, 100; Tai Kee v. Minister of Interior, 11 Haw. 57) and if in such case a permit should be refused the appli-

cant could either compel its issuance by mandamus or else proceed with immunity to act as if he had a permit (Territory v. Kua, 22 Haw. 307, 317; Royall v. Virginia, 116 U. S. 572, 582-3); no permit can be revoked without giving the holder an opportunity to be heard (Wilson v. Lord-Young Engineering Co., 21 Haw. 87); and even if the provisions as to permits and pledges were invalid that would not affect the validity of the remaining portions of these Acts. Territory v. Apa, 28 Haw. 222, 227-8.

It is competent and usual everywhere to require a permit or license for the purpose of facilitating the regulation of an occupation or business; and this may be required for the mere purpose of facilitating the collection of a tax or fee. See Royall v. Virginia, 116 U. S. 572, 582; In re Kalama, 22 Haw. 96. Hence the only real question under this heading is not as to the permits but as to the prescribed conditions for obtaining permits.

The main objection urged against the pledge provision is that it requires the applicant upon obtaining a permit to observe all the terms of the law and regulations whether valid or invalid. No particular objection thus far has been made to the portion of the pledge which contemplates instruction consistently with loyalty to the United States; for opposing counsel have thus far contended that that is just what the schools and teachers are doing anyway—at least they have not yet taken the position that the schools and teachers should be allowed unrestricted license to teach loyalty to a foreign country and disloyalty to the home country of the pupils.

The argument that all the terms of the law and regulations would have to be observed whether valid or not is obviously unfounded. We contend that no term is invalid, but if any is invalid it would not be law. It is on this ground that it is held that in otherwise proper cases an injunction may issue to prevent persons who are State officers from enforcing an alleged invalid statute, because, if the statute is invalid, such persons are held to act not in their official but in a private capacity. Cavanaugh v. Looney, 248 U. S. 453, 456, and cases there cited. The provision in question is not unlike the common provision in license laws which requires the licensee to give a bond to observe all the terms and conditions of the law, in which case it would seem that he would not be liable on the bond by reason of failure to observe an invalid provision (New London v. Howe, 94 Conn. 269, 274; 108 Atl. 529), or it is somewhat analogous to a provision which makes the issuance of a license conditional upon the licensee observing the provisions of the law, in which case also it would seem that the licensee would not be precluded from setting up the invalidity of any of the provisions. See The King v. Lau Kui, 7 Haw. 489. The word "terms" in this section cannot mean more than the word "provisions" would mean. In Section 9 of Act 30 as originally enacted (Appendix, p. v), this being the section which makes a violation of the Act or regulations a misdemeanor and prescribes the penalty, the word "terms" as well as "provisions" is used, but it would be absurd to say that a person could be convicted and punished for a violation of an invalid term or provision. All, both persons conducting

schools and teachers during the first two years, and all of both classes who have since taken out permits, have taken the pledge without objection.

The principal argument made by opposing counsel heretofore and adopted by the Circuit Court of Appeals against the validity of the provision requiring certain qualifications for teachers has been that, while it might be reasonable to require teachers in the Japanese Language Schools to possess qualifications as teachers of the Japanese language, it is unreasonable, arbitrary and oppressive to require them to have qualifications in other subjects. This argument is based on an erroneous assumption of fact that only the Japanese language is taught in these schools and upon a false notion as to the breadth of the police power. It ignores the major ultimate objects of education from the standpoint of the state as well as the actual situation existing in Hawaii. Can it be that it is beyond the legislative power to require that teachers of American pupils in schools in America shall as one of their qualifications know something of the ideals, history, institutions and language of the country? The recent pronouncements of the Federal Supreme Court in the Nebraska and Oregon cases would seem to be sufficient answer. The "Survey" above referred to shows that instruction in these schools is not confined to the Japanese language, but extends to many other subjects, including even American history, institutions and ideals. And yet it is contended that the legislature cannot require these teachers to possess qualifications in these subjects even to an elementary extent!

It is immaterial that some of the teachers teach other subjects — particularly reading and writing. Anyone who knows anything about pedagogical methods knows that the teaching of even reading and writing does not consist merely of the teaching of words as from a dictionary, especially at the present stage of pedagogical science. These subjects are taught largely through stories, historical and fanciful, and through literature on other subjects. Matters of general knowledge, morality, patriotism, etc., are naturally and necessarily prominent. The teachers are in daily contact and touch with the pupils, who are American citizens, and these teachers, especially considering their own views, cannot confine their instruction and influence to mere matters of language. Naturally questions arise and discussions are had in regard to American subjects and comparison is made with corresponding Japanese subjects on the part of the pupils, who at the same time attend the public schools of the Territory. As shown in the "Survey," not only are questions of loyalty and other questions particularly bearing on citizenship covered in the Japanese text books, but the tendency of many of the teachers to turn the minds of the pupils towards loyalty to Japan and its emperor as their country and their emperor, is shown by the testimony of those most competent to give testimony on the subject—on pages 130-3 of the "Survey." Even if it could be shown that some of the teachers did not go into subjects other than mere reading and writing, it would not affect the validity of the Act, and of course the teachers doubtless are shifted about from time to time, sometimes teaching one subject and

sometimes another. And even if it could be shown that the text books were confined merely to teaching the language, that would not prevent the requirement of these qualifications of persons who are such daily guides, philosophers and friends of the pupils in a vast system of schools like this and under the special conditions existing in this Territory. As well say that a man who desires to devote himself exclusively to the practice of criminal law might successfully contend that an act which would require him to pass an examination in law in general in order to be admitted to the bar, is unconstitutional by reason of going too far or being too broad.

However, it is unnecessary in order to support these provisions to go into the actual subjects taught or the methods of teaching them. It is sufficient that teachers of American citizens in this extensive system of schools should know at least the elements of the history, institutions, ideals and language of the country in which they are teaching and of which their pupils are citizens. Even as to the English language they should at least be in a position to read further on such subjects as American history, institutions and ideals and particularly the daily newspapers in order that they may be in a position to understand local conditions and discuss intelligently and along right lines such subjects as would naturally arise between them and their pupils affecting the quality of the latter's American citizenship—whether they actually endeavor to teach good American citizenship or refrain from teaching disloyalty to America or not, and they should be in a position to

correlate the Japanese words with the English words which the children are studying at the same time in the public schools. This provision on qualifications might well constitutionally go much further but how far it might properly go is a question that need not concern the Court in this case. It is well within proper limits. It is within the field of legislative power—whether the courts agree as to the policy or not. It is intended to meet, in a remarkably mild way, a great urgent public need.

The opinion of the Circuit Court of Appeals in Farrington v. Tokushige, 11 F. (2d) 710, advances, as an argument against the validity of this provision, the fact that although a substantial understanding of American history, institutions and ideals is required of the teachers, the Territory does not require a knowledge of the foreign language in which the school is being conducted. We urge that the absence of this requirement is one of the many indicia of the propriety of the statutory regulations of these schools. The control of the schools is left in the hands of the associations in all respects in which they do not threaten the safety and political health of the community if not regulated.

To a lesser degree opposing counsel have objected that this provision offends against the rule of reasonable classification and also that no standard of qualification is defined and hence that more or less arbitrary power is vested in the officials who are to pass upon the qualifications of applicants. The legislature was not acting theoretically but with reference to particular needs. And as to standards of meas-

urement, the proof of the pudding is in the eating; no difficulty has been found thus far by those applying the tests nor complaints made by those to whom the tests have been applied. As well say that tests of these kinds could not be made for graduation purposes by schools and colleges. See Mutual Film Corp. v. Ohio Industrial Comm., 236 U. S. 230, 245-6; Hall v. Geiger-Jones Co., 242 U. S. 539, 552-4; Merrick v. Halsey & Co., Id., 568, 590; Bratton v. Chandler, 260 U. S. 110, 114; Gundling v. Chicago, 177 U. S. 183, 187; Ex parte McManus, 151 Cal. 331, 335; Riley v. Chandler, 181 Cal. 589, 595 (185 Pac. 855, 858).

Reports. The last paragraph of Sec. 391 (R. 61) requires one who conducts a Foreign Language School to file with the Department not later than June 15 of each year a sworn list of the pupils showing the name, sex, parents or guardians, place of birth and residence of each child.

It is difficult to see what possible constitutional objection there can be to this provision calling for information in regard to the pupils—whether it is desired for the purpose of determining the amount of the fee or for throwing light on the problems of regulation or for general statistical purposes. Information of this nature has long been required of private schools in general in Hawaii, as, for instance, under the Act of 1865 and in the present law (see Sec. 313, Appendix hereof, p. xviii) and no one has ever objected to furnishing it or questioned the power of the legislature to require it.

It is common in license laws and ordinances to require information to be furnished by licensees ac-

cording to the nature of the business and the purposes for which the information is desired (see New London v. Howe, 94 Conn. 269, 275; 108 Atl. 529), and this has been a common requirement under Hawaiian license laws.

Although the plaintiffs in their bill claim that the Acts and regulations in question are contrary to the liberty and property clauses of the 5th and 14th Amendments and the equal protection clause of the latter Amendment, they have nowhere and at no time hitherto invoked the aid of the security provisions of the 4th Amendment or the protection of the 5th Amendment against compulsion to be a witness against oneself. Provisions which go much further than that now in question have been sustained in various classes of statutes. We need not dwell upon the extent to which laws everywhere go in calling for detailed information from or requiring thorough investigations of the affairs of banks and trust, insurance and other companies, which certainly are of no greater public concern than a vast system of schools for the education of citizens of the country. We all are familiar with the extensiveness of the information required under the tax laws and particularly those of the Federal government. In Flint v. Stone Tracy Co., 220 U. S. 107, 174-7, the Court not only sustained the validity of provisions of this kind in the corporation tax law, but held that the information obtained might in the legislative discretion be made public. Similarly as to provisions of this nature in the income tax law. United States v. Baltimore Post, 16 U. S. S. C. Adv. Ops. 1924-5, 633.

Likewise we are familiar with the extent of the information required under the census laws. See 2 Fed. St. An., 2nd ed., pp. 50-1; United States v. Sarle, 45 Fed. 191.

On this point opposing counsel has heretofore cited Salisbury v. Equitable Purchasing Co., 147 S. W. (Ky. Ct. of App.) 813, but in that case the statute was very different from the provision now in question in its onerousness and inquisitorial nature, especially when considered in connection with the kind of business involved and its effects upon others than those engaged in it—so much so that the court apparently thought the act had its origin in malice or ill will, or, if not, at least in an unreasonable, arbitrary, capricious and oppressive disposition.

Text Books and Attendance. Sec. 396 (R. 63) confers on the Department of Public Instruction power to make regulations relating to various enumerated subjects and prescribes that until otherwise provided by the Department, up to September 1, 1923, pupils shall have completed the public school first grade or its equivalent, and thereafter the first and second grades, before attending a Foreign Language School; also that beginning Sept. 1, 1923, and thereafter for grades one, two and three, and beginning Sept 1, 1924, and thereafter for grades four and above, all new text books used in elementary Foreign Language Schools shall be based upon the principle that the pupil's normal medium of expression is English and shall contain in as far as practicable English equivalents for foreign words and idioms. The Department was also authorized to prepare or cause to be pre-

pared suitable text books for the teaching of foreign languages in the Foreign Language Schools and to arrange for the publication and sale thereof; it was provided further that in the Foreign Language Schools no subject should be taught nor course followed nor entrance nor attendance qualification required nor next books used other than as prescribed or permitted by the Department, and finally that the regulations prescribed in this section as to text books and attendance might be changed by the Department. This was a section of Act 30 of 1920 as amended by Act 171 in 1923. On Sept. 1, 1925, the Department modified these limitations as to attendance by providing (R. 66) that they should not apply to Foreign Language Schools whose text books and course of study were approved by the Department as to any pupils who were also in regular attendance at a public school or equivalent private school.

It will be remembered (see pp. 15-16 above) that in 1922, upon the recommendation of a joint committee of American and Japanese experts who were appointed to revise the text books, the Department adopted regulations as to attendance and text books substantially as shortly afterward embodied in the Act; that in consequence of a ruling by the Hawaiian court that the regulations were not at that time within the authority of the Department the Legislature afterwards embodied the regulations as to both attendance and text books in the Act; that new text books were prepared; that the revision of the text books was for the purpose of further Americanizing them, correlating them with the study of

English in the public and equivalent private schools, and improving them in accordance with recognized correct pedagogical principles; that the regulations as to attendance were for doing away with the serious hindrance to the study of English in its initial stages among the younger pupils (first and second grades) in the public and equivalent private schools as well as for the mental and physical welfare of these very young children; that the results obtained from the use of the new text books by the numerous Foreign Language Schools which have adopted them have been highly satisfactory, and that after further study of the whole situation the Department concluded that it could without undue detriment do away with the attendance requirement as to the Foreign Language Schools which used the new text books. This it did by the regulations now in question.

If the regulations are ineffective the statute remains. The main effect of the regulations is to mitigate (Do plaintiffs complain of this?) the statute by practically doing away with the attendance requirement by providing that it shall not apply in the cases of schools which use text books approved by the Department as to pupils in attendance at the public schools or equivalent private schools, which include all of the theretofore excluded pupils in the 1st and 2nd grades, leaving the statute to apply if at all as to attendance only to some of the very young children in some of the kindergartens which are maintained by some of the schools. How many, if any, pupils would thus be excluded is a question and it is prob-

ably much more of a question whether any question arising from that fact would ever become the subject of litigation; and in general, as already shown, statutes and regulations are not rendered invalid merely because by reason of their generality they exclude or include a little more or less than might be thought to be most appropriate or desirable.

The rub seems to have come with the attendance provision. Apparently, whatever may be pretended to the contrary, there is no real objection to the new text books at the present time except as a matter of false pride. All know that the new books are much superior to the old ones—so much so that it is believed that as much can be accomplished in six years with the new as in eight years with the old, not to mention the added interest and inspiration that they have instilled into the teachers and pupils alike who have used them. If there is any other real objection to the new books it must be a desire on the part of the plaintiff schools or those back of them to continue the use of text books prepared in large part from the Japanese standpoint—so that the question would come down to this: Is it competent for the Legislature to forbid foreign teachers of citizen pupils throughout the Territory to use text books which tend to teach loyalty to foreign countries and disloyalty to the home country, and is it competent for the Legislature to require that text books used in such schools shall contain as far as practicable English equivalents for the foreign words and idioms (which the new text books do in a glossary at the end) so as to correlate the work of the Foreign

Language Schools with that of the public and equivalent private schools in the important matter of the language of the country under the existing conditions which make it so difficult to teach this language to these young citizens who dwell in homes with foreign parents; and is it competent for the Legislature directly or through the Department to forbid the youngest children (1st and 2nd grades) in the public and equivalent private schools to attend the Foreign Language Schools unless the latter use text books that will at least mitigate the evils which would otherwise result from the attendance of the children at both schools during their tender years and during this crucial initial period in the work of the regular schools? The answer would seem to be found in the pronouncements of this court set forth in Pierce v. Society of Sisters of Holy Names, 268 U. S. 510.

Opposing counsel has insinuated with an absolute abence of basis either in the record or in fact, that the whole text book matter was gotten up as a money-making scheme for the benefit of the Territory or of some friendly publishing company. The statutory provisions (Tr. pp. 60, 64), bearing on this matter do not seem to contemplate that the Department itself should publish and sell the books but to provide that all royalties, commissions and money, if any, received by it in connection with their publication or sale shall be used for the purposes of the Act and be taken into consideration for the purpose of reducing the fees; and, as to helping out any friendly publisher, not only is that absurd on the face of it but it is contrary to the spirit shown by the Department throughout in its administration of the Act.

CONCLUSION

It is submitted that the Foreign Language School law is fully within the police powers of the Territory, being a regulatory and not a prohibitory law and therefore within the restrictive language of this court in the recent school cases from Nebraska, Iowa and Oregon; and that even if one or more of the specific provisions of the statute should be held unconstitutional, still there remains enough in the law to forward its end in protecting the Americanism of young citizens of foreign blood and that the Act therefore should be held valid even in the event that this Court should strike certain portions therefrom as unconstitutional.

Respectfully submitted,

WILLIAM B. LYMER,
Attorney General of the Territory of Hawaii.

MARGUERITE K. ASHFORD,
First Deputy Attorney General of the Territory of Hawaii.
Attorneys for Petitioners.

(Appendix follows)

Appendix.

ACT 30

Special Session of 1920,

Territory of Hawaii.

AN ACT Relating to Foreign Language Schools and Teachers Thereof.

Be It Enacted by the Legislature of the Territory of Hawaii.

Section 1. The term "foreign language school" as used in this Act, shall be construed to mean any school which is conducted in any language other than the English language or Hawaiian language, except Sabbath schools. The word "department" shall mean the department of public instruction of the Territory of Hawaii.

Section 2. No person shall conduct a foreign language school in the Territory of Hawaii, unless and until he shall have first applied to and obtained a permit so to do from the department of public instruction of the territory.

Section 3. No person shall teach in a foreign language school unless and until he shall have first applied to and obtained a permit so to do from the department, and this shall also be construed to include persons exercising or performing administrative powers at any school.

Section 4. No permit to teach in a foreign language school shall be granted unless and until the department is satisfied that the applicant for the same is possessed of the ideals of democracy; knowledge of American history and institutions and knows how to read, write and speak the English language.

Provided, however, that the provision concerning knowledge of the English language shall be liberally construed during the two years after this Act goes into effect; it being understood that it would be difficult within that time to secure teachers fully qualified under this section and at the same time qualified to teach a foreign language. And provided, further, and it is hereby declared that the object of this Act is to regulate and not to prohibit the conducting of foreign language schools and the teaching of foreign languages; but to regulate the same so that the Americanism of the pupils may be promoted, and the department is hereby directed to carry this Act into effect in accordance with the spirit of this declaration.

Section 5. Before issuing a permit to conduct a foreign language school or to teach in such a school the department shall require the applicant for such permit to sign a pledge that the applicant will, if granted a permit to conduct or teach in such a school, abide by and observe the terms of this law and the regulations and orders of the department and will, to the best of his ability, so direct the minds and studies of pupils in said school as will tend to make them good and loyal American citizens and will not instruct or permit said pupils to receive instruction in said school in any way inconsistent therewith.

Section 6. No foreign language school shall be conducted in the morning before the school hours of the public schools or during the hours while the public schools are in session. Nor shall any pupil attend a foreign language school for more than one hour

each day nor exceeding six hours in any one week, nor exceeding thirty-eight weeks in any school year.

Provided, however, that the department may, in its discretion, with the approval of the governor, modify the terms of this section if it deems it can do so consistetly with the declared object of this Act.

Section 7. The department shall have full power from time to time to prescribe the course and courses of study and the text books to be used in any foreign language school, and no other course of instruction or text books shall be used in such schools, except the ones prescribed by the said department. No books used in any foreign language school shall be furnished at the expense of the department.

Section 8. If the department shall at any time become satisfied that any holder of a permit to conduct a foreign language school or to teach therein does not possess the qualifications herein required, or shall have violated or failed to observe any of the provisions of this Act, or of the regulations or orders of the department, the department may then and thereupon revoke the permit theretofore granted and the same shall thereupon be and become null and void.

Provided, however, that before so doing, the department shall first notify the holder of said permit to show cause why such action should not be taken and shall give such holder full opportunity to be heard in defense. The decision of the department shall be final.

Section 9. Any person who shall conduct a for-

eign language school, or who shall teach in a foreign language school, contrary to the provisions of this Act, or who shall violate any of the terms thereof, or of the regulations or orders of the department, shall be guilty of a misdemeanor and upon conviction thereof punished by a fine not to exceed twenty-five dollars ($25.00). Each day's violation of this Act shall be deemed a separate offense.

Section 10. This Act shall take effect on the first day of July, 1921.

Approved this 24th day of November, A. D. 1920.

C. J. McCARTHY,
Governor of the Territory of Hawaii

ACT 171

Session Laws of 1923,

Territory of Hawaii.

AN ACT to Amend Sections 1, 2, 4, 7 and 8 of Act 30 of the Special Session Laws of 1920, and Adding Thereto a New Section to be Known as Section 9A, Relating to Foreign Language Schools.

Be It Enacted by the Legislature of the Territory of Hawaii:

Section 1. Section 1 of Act 30 of the Special Session Laws of 1920, is hereby amended to read as follows:

"Section 1. The term 'foreign language school,' as used in this Act shall be construed to mean any school which is conducted in any language other than

the English language or Hawaiian language, except Sabbath schools. All subdivisions and activities under the direction, management or supervision of any foreign language school, whatever language may be used in such subdivision and/or activities, shall be subject to the provisions of this Act. The word 'department' shall mean the department of public instruction of the Territory of Hawaii."

Section 2. Section 2 of Act 30 of the Special Session Laws of 1920 is hereby amended to read as follows:

"Section 2. No person shall conduct a foreign language school in the Territory of Hawaii without a written permit from the department of public instruction. All permits, licenses, certificates or consents of every kind or nature issued by the department to any foreign language school, or to any person or persons conducting such school—irrespective of the law or laws under which the same were issued and the time when issued—shall on or after May 5, 1923, be of no effect. After September 1, 1923, no permit shall be issued without a fee being paid therefor, the amount of which fee shall be based on the school attendance. The said fee shall be computed on the average attendance of the previous year at the rate of one dollar ($1.00) per pupil, except as to schools just starting, the fee of which shall be computed at the same rate on the expected average attendance — as estimated by the department — and shall be correctly adjusted to conform to the actual average attendance, by an addition to, or a subtraction from, the fee payable for the following year.

"On September 1, 1923, and annually thereafter, all permits, in order to be valid, must be renewed and shall, unless previously forfeited, be renewed by the department on the payment of a fee determined in the same manner as above specified; provided, that the department shall not be required to renew a permit for the conducting of any foreign language school in the conducting of which there has been a violation of the terms or provisions of this Act. All of said fees collected by the said department shall be paid over to the treasurer of the Territory of Hawaii, and the moneys so paid are hereby appropriated to the department of public instruction to be expended in enforcing and carrying out the provisions of this Act. If at any time the funds at the disposal of the department from fees previously collected, or from royalties, commissions or other moneys received in connection with the publication or sale of foreign language school text books, shall make it possible fully and effectively to carry out the provisions of this Act with the permit fees payable by the schools based on a lower rate than one dollar ($1.00) per pupil, the department is authorized to make such a reduction in that rate as it may deem reasonable and expedient.

"Every person conducting a foreign language school shall, not later than June 15 of each year, file with the department on forms prescribed or furnished by it, a sworn list of all pupils in attendance at said school during the current school year, showing the name, sex, parents, or guardians, place of birth and residence of each child; provided, however, that

the department may, on cause shown, modify the requirements of this sentence during the year 1923."

Section 3. Section 4 of Act 30 of the Special Session Laws of 1920 is hereby amended to read as follows:

"Section 4. No permit to teach in a foreign language school shall be granted unless and until the department is satisfied that the applicant for the same is possessed of the ideals of democracy; knowledge of American history and institutions, and knows how to read, write and speak the English language.

"It is hereby declared that the object of this Act is to fully and effectively regulate the conducting of foreign language schools and the teaching of foreign languages, that the Americanism of the pupils may be promoted; and the department is hereby directed to carry this Act into effect in accordance with this declaration."

Section 4. Section 7 of Act 30 of the Special Session Laws of 1920 is hereby amended to read as follows:

"Section 7. The department shall have full power from time to time to prescribe, by regulations, the subjects and courses of study of all foreign language schools, and the entrance and attendance prerequisites or qualifications of education, age, school attainment, demonstrated mental capacity, health and otherwise, and the text books to be used in any foreign language school.

"Until otherwise provided by the department, the following regulations shall be in effect:

"From the present up to September 1, 1923, every pupil shall have first satisfactorily completed the American public school first grade, or a course equivalent thereto, before attending, or being allowed to further attend, any foreign language school.

"Beginning September 1, 1923, and thereafter, every pupil shall have first satisfactorily completed the American public school first and second grades, or courses equivalent thereto, before attending or being allowed to further attend, any foreign language school.

"Beginning September 1, 1923, and thereafter, for grades one, two and three; and beginning September 1, 1924, and thereafter, for grades four and above; all new text books used in elementary foreign language schools shall be based upon the principle that the pupil's normal medium of expression is English and shall contain, as far as practicable, English equivalents for foreign words and idioms.

"The department is hereby authorized to prepare or cause to be prepared or procure or arrange for procuring suitable text books for the teaching of foreign languages in the foreign language schools and to enter into an agreement or agreements for the publishing and sale of the same. All royalties, commissions and money received by or on behalf of the department in connection with the publication or sale of such text books shall be paid over to the treasurer of the territory and are hereby appropriated to the department to be expended for the purposes of this Act. In every foreign language school no subject of study shall be taught, nor course of study fol-

lowed, nor entrance nor attendance qualification required, nor text books used, other than as prescribed or permitted by the department, provided, however, that the regulations set forth in Section 7 of this Act shall be effective until superseded in part, or in whole, by others made by the department."

Section 5. Section 8 of Act 30 of the Special Session Laws of 1920, is hereby amended to read as follows:

"Section 8. The department shall have power to appoint one or more inspectors of foreign language schools and to pay the salaries and necessary expenses thereof; such inspectors and other duly authorized agents of the department shall have the right freely to visit said foreign language schools and to inspect the buildings, equipment, records, and teaching thereof and the text books used therein.

"If the department shall at any time become satisfied that any holder of a permit to conduct a foreign language school or to teach therein does not possess the qualifications herein required, or shall have violated or failed to observe any of the provisions of this Act, or of the regulations or orders of the department, the department may then and thereupon revoke the permit theretofore granted and the same shall thereupon be and become null and void."

Section 6. Act 30 of the Special Session Laws of 1920 is hereby amended by adding thereto a new section to be known as Section 9A and to read as follows:

"Section 9A. If any section or part of this Act be decided by the courts to be unconstitutional or in-

valid, the same shall not affect the validity of the Act as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid."

Section 7. This Act shall take effect upon its approval.

Approved this 2nd day of May, A. D. 1923.

W. R. FARRINGTON,
Governor of the Territory of Hawaii.

ACT 152

Session Laws of 1925,

Territory of Hawaii.

AN ACT to Amend Sections 391 and 398 of the Revised Laws of Hawaii 1925, Relating to Foreign Language Schools.

Be It Enacted by the Legislature of the Territory of Hawaii:

Section 1. Section 391 of the Revised Laws of Hawaii 1925, is hereby amended by substituting for the first paragraph thereof the following:

"Section 391. *Permits, fees.* No foreign language school shall be conducted in the Territory unless under a written permit therefor from the department of public instruction nor unless the fee therefor shall have been paid as hereinafter provided. Nor shall such permit be issued unless such fee shall have been paid. Such permit shall be kept exposed in a prominent place at such school so as to be readily seen and read by visitors thereat.

"For the purposes of this chapter the school year shall be deemed to begin on September 1 of each year and to end on August 31 of the following year. After May 10, 1925, on or before the first day on which any foreign language school shall be conducted in any school year or unexpired part thereof, there shall be paid to the department for or in respect of conducting such school during such school year or unexpired part thereof a fee, the amount of which shall be computed as nearly as may be, at the rate of one dollar ($1.00) per pupil, on the estimated average attendance of pupils at such school during the period during which such school was conducted in the next preceding school year, or, if such school shall not have been conducted during any part of such preceding school year, then at the same rate on the estimated expected average attendance during the school year or unexpired part thereof in question, in which latter case the amount shall be adjusted to conform to the estimated average attendance during such year or part thereof by an addition to or subtraction from the fee payable for the next following school year. The amount of such fee shall be estimated and determined by the department from such information as it may have and shall be payable by any person, persons or corporation conducting or participating in conducting such school. All officers, all teachers, and all members of any committee or governing board of any such school, and, in case such school is conducted by or for a corporation or a voluntary association or other group of persons, all members or associates of such corporation, association or group, shall be deemed to be participants in conducting such school.

Payment heretofore made for any school for the school year beginning September 1, 1924, or any part thereof of the fee which was provided for in this section before the passage of this amendment shall be deemed to be in full satisfaction of the fee required hereunder for such school for such school year or the unexpired part thereof.

"In case any such school shall be conducted at any time without such fee having been paid for conducting the same, the Territory may recover such fee in a civil action against any person, persons or corporation who or which so conducted or participated in so conducting such school, and for that purpose if such school is conducted, or if its conducting is participated in, by a corporation or a voluntary association, or other group of persons, such action may be brought against such corporation or association or group in its corporation or association or common name, with or without joining any or all individual defendants who may be liable for such fee, and, in a case of such association or group, process may be served on any officer or teacher, or on any member of a committee or governing board, or on any member or associate, of such school, association or group, and any judgment recovered against the corporation or association or group as such may be enforced against the property of the corporation or the joint property of the members or associates of such association or group, as the case may be, and against the individual property of any of the officers, teachers, members of any committee or governing board, or members or associates of such school, corporation, association or

group, who shall have been served with process or who shall have appeared in the action, in the same manner and to the same extent as if all had been named as defendants. The civil and penal remedies under this chapter shall be concurrent and not exclusive of each other. No injunction shall issue from, nor shall any suit be maintained in, any court for the purpose of restraining the determination or collection of any such fee or the prosecution of any penal proceeding for conducting or participating in conducting any such school without such fee having been paid; but any payor of any such fee who desires to contest the validity thereof may do so under the provisions of Section 1444, for which purpose the department shall be deemed a public accountant within the meaning of that section and Section 1436."

Section 2. Section 398 of said Revised Laws is hereby amended so as to read as follows:

"Section 398. *Penalties.* Any person who shall conduct or participate in conducting a foreign language school, or who shall teach in a foreign language school, contrary to the provisions of this chapter, or who shall violate or participate in violating any of the provisions thereof or of the regulations or orders of the department, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed twenty-five dollars ($25.00). Each day's violation of this chapter or of any of the provisions thereof shall be deemed a separate offense."

Section 3. This Act shall take effect upon its approval.

Approved this 29th day of April, A. D. 1925.

W. R. FARRINGTON,
Governor of the Territory of Hawaii.

ACT 36

Special Session of 1920,

Territory of Hawii.

AN ACT to Prescribe Certain Qualifications for School Teachers for the Purpose of Safeguarding American Citizenship in the Territory of Hawaii.

Be It Enacted by the Legislature of the Territory of Hawaii:

Section 1. No person shall serve as a teacher in any school without first having obtained a certificate from the department of public instruction, which certificate shall be issued, without cost to the teacher, in such form as the department shall determine. Before issuing a certificate to any teacher, the department shall satisfy itself that such teacher is possessed of the ideals of democracy, knowledge of American history and institutions, and knows how to read, write and speak the English language; provided, however that the provision concerning knowledge of the English language, shall be liberally construed during the two years after this Act goes into effect.

Section 2. For the purpose of this Act the word "teacher" shall be construed to include also persons exercising or performing administrative powers or

duties at any school. The word "school" shall be construed to include every school, whether under governmental supervision or otherwise, except Sabbath schools which convene once each week.

Section 3. The department may revoke any such certificate after issuance thereof when satisfied that the holder thereof does not possess the ideals or knowledge mentioned in Section 1 of this Act, but in such case the holder of the certificate shall first be given full opportunity to justify the holding of the certificate.

Section 4. Whoever shall serve as a teacher, without holding an unrevoked certificate issued hereunder, shall be punished by a fine not exceeding twenty-five dollars ($25.00).

Section 5. This Act shall take effect July 1, 1921.

Approved this 24th day of November, A. D. 1920.

C. J. McCARTHY,
Governor of the Territory of Hawaii.

GENERAL LAWS RELATING TO PRIVATE SCHOOLS.

Secs. 309, 313-315, Revised Laws of Hawaii, 1925.

Sec. 309. *Public, Private.* All schools established and maintained by the department in accordance with law are public schools. All other schools established and conducted in compliance with law are private schools, irrespective of the hours during which the sessions shall take place. (L. 1896, c. 57, s. 31; C. L. s. 112; R. L. s. 206; am. L. 1907, c. 46, s. 1; R. L. 1915, s. 272; am. L. 1920, c. 23 s. 1.)

Sec. 313. *Private, How Established.* Any person or persons desiring to establish a private school within the Territory of Hawaii shall, prior to the establishment thereof, make an application in writing to the department of public instruction of the Territory, which application shall be signed by the applicant or applicants and shall state in substance (1) the name or names of the persons desiring to establish such school; (2) the proposed location thereof; and (3) the course of instruction and the languages in which such instruction is to be given.

Upon the receipt and approval of such application, the department of public instruction shall issue to the person or persons applying therefor a permit in form to be by it approved, authorizing the establishment of such school; and no private school shall be established within the Territory except in conformity with this chapter.

Attendance at any school established or maintained without complying with the terms of this section shall not be considered attendance at a public or private school within the meaning of this chapter.

The department may, from time to time, require regularly established private schools to submit reports in such form as it may deem proper. Failure to comply with the provision of this section shall constitute an offense punishable, upon conviction, by a fine not exceeding ten dollars for each offense. (L. 1896, c. 57, s. 21; C. L. s. 114; R. L. s. 209; am. L. 1907, c. 48, s. 1; R. L. 1915, s. 275; am. L. 1917, c. 75, s. 1; am. L. 1920, c. 21, s. 1.)

Sec. 314. *Supervised by Department.* Every private school shall be subject to the supervision of the department. It shall be the duty of the department to require that teachers of private schools be persons of good moral character; and that the premises of such schools comply with the rules and regulations of the department, as from time to time promulgated with regard to sanitary conditions and hygiene. (L. k. 896, c. 57, s. 22; C. L. s. 115; R. L. s. 210; R. L. 1915, s. 276.)

Sec. 315. *English Language Basis of Instruction.* The English language shall be the medium and basis of instruction in all public and private schools within the Territory and any school where English is not the medium and basis of instruction shall not be recognized as a public or private school within the provisions of this chapter and attendance thereat shall not be considered attendance at school in compliance with law. Provided, however, that the Hawaiian language shall be taught in addition to the English in all normal and high schools of the Territory; and that where it is desired that another language shall be taught in addition to the English language, such instruction may be authorized by the department, by direct order in any particular instance. Provided, further, that instruction in such courses shall be elective. (L. 1896, c. 57, s. 30; C. L. s. 123; R. L. s. 211; am. L. 1907, c. 47, s. 1; R. L. 1915, s. 277; am. L. 1919, c. 191, s. 1.)

GENERAL LAW, PAYMENT UNDER PROTEST

Sections 1436 and 1444.

Revised Laws of Hawaii, 1925

Sec. 1436. *Public Accountants Defined, Duties.* All persons who, by any law, regulation or appointment are charged with the duty of collecting or receiving revenue or other moneys on account of the Territory, or with the duty of disbursing moneys on account of the public service shall become and be "public accountants," and shall perform all such duties and render such accounts as this chapter prescribes, and as the treasurer and auditor shall from time to time direct. (L. 1898, c. 39, s. 29; R. L. s. 1515; R. L. 1915, s. 1384.)

Sec. 1444. *Payment to Territory Under Protest.* Moneys representing a claim in favor of the Territory may be paid to a public accountant of the Territory under protest in writing signed by the person making such payment, or by his agent, setting forth the grounds of such protest, in which event the public accountant to whom such payment is made shall hold the money so paid for a period of thirty days from the date of payment.

Action to recover the money so paid, or proceedings to adjust the claim may be commenced by the payor or claimant against the public accountant to whom the payment was made, in a court of competent jurisdiction, within said period of thirty days, and in default of bringing such suit or proceedings within said period, the money so paid shall be by

such accountant deposited in the Treasury of the Territory, and the same shall thereupon become a government realization.

If action to recover the money so paid under protest, or proceedings to adjust the claim, shall be commenced within thirty days after payment of the money under protest, the amount so paid shall be transmitted by the public accountant to the treasurer of the Territory who shall hold the same as a special deposit pending the final decision of the cause. If the final decision of the cause shall be in favor of the claimant, the treasurer of the Territory shall pay to him out of such special deposit, such amount as shall have been adjudged to be due to him in such cause; the amount so to be paid to be ascertained by the treasurer from a certified copy of the judgment of the court in which the cause was finally determined which shall be his authority and warrant for such payment. (L. 1907, c. 45, s. 1; R. L. 1915, s. 1392.)

In the Supreme Court

of the

United States

October Term, 1938

No. 485

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LANGMACK, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Petitioners,

vs.

T. TOKUSHIGE, et al.,

Respondents.

BRIEF OF RESPONDENTS

JOSEPH LEVERETT,

JOSEPH B. POINDEXTER,

Attorneys for Respondents.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1925

Case No.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,
Petitioners,

vs.

T. TOKUSHIGE, et al.,
Respondents.

BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

The sole question before the Circuit Court of the Ninth Circuit on the appeal taken to that Court by petitioners herein was as to the legality of the Preliminary Injunction granted by the Honorable J. T. DeBolt, Judge of the United States District Court in and for the District and Territory of Hawaii. (Record, pages 130-134.)

A consideration of this question involved the constitutionality of the various acts of the legislature of the Territory of Hawaii concerning foreign language

schools, which acts are set forth in detail in an appendix to the brief of petitioners filed herein. (Appendix to Petitioners' Brief, pages i to xv inclusive.)

A compilation of these statutes is attached to the original petition filed in the District Court of the United States as Exhibit "A." (Record, pages 56-66.)

It will thus be seen that the suits filed in the courts of the Territory of Hawaii, prior to the passage of the Act of 1925 and referred to on page 2 of Petitioner's Petition, are not involved in the present proceeding.

Nor, will the Court concern itself with the Temporary Restraining Order referred to on page 3 of Petitioners' Petition and which Restraining Order was dissolved by the trial court.

The 1920 Federal Commission Survey

On pages 9 and 10 of Petitioners' Brief reference is made to "A survey of education in Hawaii made in 1920 by a Federal Commission," and we notice that the petitioners have forwarded to the Court ten copies of this survey. The survey so extensively referred to in the brief of petitioners forms no part of the record in the case. The respondents had no opportunity of being heard on the subjects involved in the survey and the findings of the Commission are in no sense binding upon these respondents. If, however, this Court should decide to examine this survey, we respectfully ask the Court to consider the addresses of the late Franklin K. Lane, recently Secretary of the Interior, and Philander P. Claxton, Commissioner of Education, on the subject of Americanism, found on pages 142 and 143 of said survey.

REVOCATION OF TEACHERS' CERTIFICATES

The partisan statement of the effect of the foreign language school law of Hawaii, found in petitioners' brief, is so fully answered by the complete resume of the law in the opinion of the Circuit Court of Appeals, that we deem it unnecessary to refer to this subject. But we would, however, call attention to the statement of counsel that a teacher's permit might be revoked for cause, after notice and opportunity to be heard. (Petitioners' Brief, page 11.)

Section 8 of the Act of 1920 provided for such notice and hearing, but this section was amended by Section 5 of the Act of 1923, and Section 8, in part, was re-enacted; but the provision for the notice and hearing was omitted in the later enactment.

Counsel failed, thoughtlessly no doubt, to call attention to this repeal.

ARGUMENT

Former decision of this Court with reference to the fundamental right of parents to control the education of their children.

Counsel for petitioners seemed to misapprehend the principle underlying the decisions in the cases of *Meyer vs. Nebraska,* 262 U. S. 390; *Bartels vs. Iowa and companion cases,* 262 U. S. 404; and *Pierce vs. Society of Sisters,* 268 U. S. 510. As we interpret these decisions, they are based on the fundamental right of "parents and guardians to direct the upbringing and education of children under their control." This right was admirably stated by Mr. Justice Harlan in his dissenting

opinion (in this regard in no wise conflicting with the opinion of the majority) in *Berea College vs. Kentucky*, 211 U. S. 45, quoted in the opinion of the Court below, in this case. (Record, 196-7.)

This right or "liberty" under the Constitution "may not be interfered with under the guise of protecting the public interest by legislative action that is arbitrary or without reasonable relation to some purpose within the competency of the state to enact. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the Court." *Meyers vs. Nebraska*, supra, 390-400.

The Statutes in Question Are Prohibitive—Not Regulatory

Counsel contend that the Nebraska, Iowa, Ohio and Oregon statutes were prohibitory while the statutes of Hawaii are merely regulatory. A statute may be regulatory though its provisions be expressed in prohibitory terms or in mandatory terms or both. The Nebraska, Iowa and Ohio statutes provided that all teaching below certain grades in public and private schools must be in the English language, a mandatory regulation. The Ohio statute further expressly prohibited the teaching of the German language below the eighth grade. The Oregon statute provided that parents and guardians must send the children under their control to the public schools after September 1, 1926.

No attempt was made in the Nebraska, Iowa or Ohio statutes to control the course of study, text books, entrance requirements or qualifications of teachers, nor was there any interference whatsoever with the con-

duct of private schools except that the English language should be the medium of instruction and that foreign languages as such should not be taught below certain grades. These were declared unconstitutional by this court as such laws plainly interfere with the right of a parent to direct and control the education of his child.

The Hawaiian statute goes far beyond these statutes in every essential particular; it takes from the parent of a child attending a foreign language school, all control and direction of the education of his child. Complete control of these schools is given to the Department of Education by the law. (Sec. 396, Record, page 63.)

The effect of the law is to make all these private schools in fact public schools in all but the name, though the public contributes not one cent to their support, indeed, under the provisions of Section 55 of the Organic Act, Revised Laws of Hawaii 1925, page 80, the legislature is prohibited from appropriating public money for the support or benefit of any school not under the exclusive control of the government. They are prohibited from employing a teacher, teaching a subject, using a book, admitting a pupil or engaging in any activity of any nature, unless approved by the Department of Education. Nor can such a school be conducted until a permit is granted and an exorbitant fee paid, a condition not imposed on any other private school in the Territory.

And what is the purpose of the law in giving this complete control of these schools to the Department of Education? The statute reads:

> "Sec. 393 (Record, 62). . . . It is hereby declared that the object of this chapter is to *fully and effectively regulate* the conducting of foreign language schools and the teaching of foreign languages, that the Americanism of the pupil may be promoted. . . . ."

This declaration in the law forecloses discussion as to the object of the law. (*U. S. vs. Starn*, 17 Fed. 435.)

It is alleged in the bill (Par. IV, Record, 14) that there is nothing taught in these foreign language schools that is un-American or contrary to the ideals of democracy, but the teaching in said school inculcates Americanism in the minds of the pupils and a respect for the institutions of the United States. This was not denied by the petitioners, and on the record stands admitted. Nothing is taught that is inimical to the public welfare. The law is neither necessary nor essential to the proper enforcement of the Territory's public school policy. The hours of attendance at these schools are so arranged (they are conducted but one hour a day) as not to interfere with the attendance by the pupils therein of school age, at the public schools, and all such pupils are required to and do attend public schools throughout the term thereof; the Japanese language is not taught in the public schools. (Par. XIa of Bill, Record, 49.)

In the public schools, pupils of respondent's schools follow the same course of study and are taught the same lessons as the other pupils therein. There are many children attending the public schools and other private schools from alien families in this Territory, who do not attend the foreign language schools and whose parents speak little or no English and whose ancestral ideals are foreign to American ideals. Yet

neither the law nor the Department of Education concerns itself with their Americanism beyond what they are taught in the public schools,—the identical instruction received by the children of respondents in the same schools. In the public schools all are taught the same lessons of Americanism and democratic ideals, which are considered sufficient for a majority of the pupils, yet the minority of the pupils, whose parents desire to fit them for the battle of life by teaching them a language which will be of great benefit to them in their after careers, attend the foreign language schools where they are further regulated, controlled, taxed and "democracized" by a paternalistic government, and this, too, in the face of the admitted fact that nothing un-American is taught in the foreign language schools, and the Americanism of the pupils is advanced, not retarded in these schools. Referring to these regulations, the Court below said:

> "We feel quite safe in saying that, if such a system of regulations were enforced by one of our American commonwealths against the American college in which foreign languages are taught, it would shock the conscience of mankind." (Record, 198.)

There seems little justification, indeed, for the solicitude of the school authorities concerning the Americanism of a Japanese child who attends a foreign language school, when no such solicitude is manifested for a Japanese child coming from similar environments who does not attend such a school.

The distribution of the large found raised by taxation of the foreign language schools among selected officers and the profits from the sale of text books by a favored publisher, may be the answer.

In this connection, an observation by Judge Peckham in *Lochner vs. New York,* 198 U. S. 45, seems pertinent. Speaking for the court in a case involving an Act of the State of New York regulating the hours of employes in bakeries, he said:

> "It is impossible for us to shut our eyes to the fact that many laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed from other motives. We are justified in saying so, when from the character of the law and the subject upon which it legislates, it is apparent that the public health or welfare bears but the most remote relation to the law. The purpose of the statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the constitution must be determined from the natural effect of such statute when put into operation and not their proclaimed purpose."

Counsel insist that the Hawaii statute does not prohibit the teaching of foreign languages, but merely regulates to "a moderate extent, while not interfering in the least with the proper maintenance of these schools or the teaching of foreign languages in them, but on the contrary making them more efficient for their declared main object." (Petitioners' Brief, page 20.)

Section 4 of the Act of 1923 (Sec. 396) (Record, 63) prohibits, after September 1st, 1923, any child from attending a foreign language school until he has completed the first and second grades of the public schools or courses equivalent thereto, and the evident intention of this section is to require that the teaching in the foreign language schools should be in English, as it provides: "All new text books used in elementary for-

eign language schools shall be based upon the principle that the pupil's normal medium of expression is English and shall contain, as far as practicable, English equivalents for foreign words and idioms." The preceding section requires that all teachers of foreign languages shall know how to read, write and speak the English language.

Wherein, in principle, does this statute differ from the Nebraska statute, which required all teaching in all grades to be in English, and prohibited the teaching of a foreign language to a pupil until he has passed the eighth grade? Surely, the constitutionality of a statute of this character is not to be determined by the age of the pupil to whom it applies. If this be the measure, the Hawaii statute is as objectionable as the Nebraska statute.

In *Meyer vs. Nebraska,* supra, it is stated:

> "It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals or understanding of the ordinary child."

Petitioners may reply that this prohibition applies only until changed by the Department of Education and that it has been modified by the Board to exclude from foreign language schools only children of the kindergarten grade,—an essential grade in the system.

Under powers given by this section to the Board to prescribe these same prohibitions and others,—the Board may, under the powers granted, prescribe regulations which would, in effect, prevent the teaching of foreign languages in all grades. The Board may, at will, adopt a regulation prohibiting the teaching of a

foreign language, say, until a pupil has completed all grades in a public school below the eighth grade. Such a regulation would parallel the Nebraska statute. This regulation counsel would attempt to justify by the same argument. They would say, "foreign language schools have not been abolished, they are merely regulated." Granted this power, who can say when it will not be exercised?

From the spirit and temper shown by the present school authorities of Hawaii throughout, it is a prediction certain of fulfillment, that some such regulation would be among the first adopted, if this statute be sustained by the courts.

As said in the opinion of the lower court:

> "If the powers to legislate be once conceded the time and manner of its exercise is largely a matter of legislative discretion, over which the courts have little or no control." (Record, 199.)

The constitutionality of the statute must be determined by the power conferred, and not by the actions taken by officials under it. The presumption that public officials will do their duty cannot be indulged in determining whether or not the law violates the Constitution. This is a question of power conferred, and what, as in this case, the Board might do under it; and to be valid, the law must meet every test required by the Constitution, even the most extreme.

Eubank vs. Richmond, 226 U. S. 137; *Lochner vs. New York*, supra; *Repolje vs. Little Rock*, 166 Ark. 617, 267 S. W. 353.

In *Pierce vs. Society, etc.*, supra, p. 534, the Court said:

"Under the doctrine of *Meyer vs. Nebraska,* 262 U. S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

In Oregon, the attempt was made to compel all children to attend the public schools. Wherein is a difference in principle in the Oregon law from that of Hawaii? In Hawaii the attempt is to make these foreign language schools in fact public schools. Under the law, absolute and complete control of these schools is given to the Board of Education, the same body that controls and directs the public schools. The control of one is as broad and all-inclusive as the control of the other, except in the foreign language schools the matter of paying the cost of conducting the schools is generously left to the parent. Not only is the complete control given in every essential particular *eo nomine,* but in order to insure that nothing was overlooked, it is provided:

"All subdivisions and activities under the direction and management or supervision of any foreign language school, whatever language may be used in such subdivision and/or activities, shall be subject to the provisions of this chapter." (Sec. 390, Record, 57.)

If, as decided in *Pierce vs. Society, etc.,* supra, the parent cannot be compelled to submit the education of his child directly to the control of the public school authorities by compelling attendance at the public schools, surely this control cannot be accomplished in the manner attempted in Hawaii. That which the law prohibits directly, may not be done indirectly. (*Little Rock, etc., Ry. vs. Worthen,* 120 U. S. 907.)

The argument of counsel to justify the law because of peculiar conditions in Hawaii, suggested but not shown to exist, is so completely answered by the opinion of the Court below, that further comment is unnecessary.

Unconstitutional Delegation of Police Power

We further insist that the Hawaii law is unconstitutional in that it delegates police power to the Board of Education to be exercised at its discretion (*Yick Wo vs. Hopkins,* 118 U. S. 356; *Noel vs. People,* 187 Ill. 587, 58 N. E. 616), and no standard is furnished by the statute for the guidance of the Board (*Adkins v. Children's Hospital,* 261 U. S. 525).

The Constitutionality of Different Provisions of the Statute

Counsel say that this court should sustain such provisions of the law as may be constitutional, yet fail to point out any such constitutional provisions. They seek to impose on the court the labor of searching out and segregating the good, if any, from the bad. This, we submit, is an implied admission that the provisions of the law are so interdependent that they cannot be segregated, and that the law, as a whole, must fail, as

was held by the court below; otherwise, counsel would have attempted the segregation and pointed out those provisions of the law which do not come under the ban. But we respectfully insist that the law provides a complete system for the control of these schools, for the declared purpose of the Americanism of the pupils, and that the system as a whole, must fall, as it infringes on the liberty guaranteed by the Constitution, and deprives respondents of their property without due process of law.

The sole purpose of the law is the Americanization of the pupils of these schools, though it is admitted that nothing un-American is taught in them. Where a system infringes on the Constitution, a part of the system, though unobjectionable in itself, falls with the system. (*Wolff Pack. Co. vs. Court,* 262 U. S. 552; *Meyer vs. Nebraska,* supra.)

Where one provision of a statute is invalid, the whole must fall, where it is evident that the legislature would not have enacted the one without the other. (*Conolly vs. Union Sewer Pipe Co.,* 184 U. S. 540; *Little Rock, etc., Ry. vs. Worthen,* supra; *Spraigue vs. Thompson,* 118 U. S. 90.)

A subject may be clearly within the police powers but the enactment may be so unreasonable, unnecessary or inappropriate for the accomplishment of the purposes ostensibly disguised, that the court will declare it null and void. (*Dobbins vs. Los Angeles,* 195 U. S. 223.)

We do not contend that the Legislature might not, by a law applicable to all schools, safeguard the health, morals and welfare of the pupils; that it may not proscribe the teaching of anything subversive to our form

of government or which is contrary to the general welfare; but in so doing, the law must not infringe on the constitutional rights of the individual. (*Dobbins vs. Los Angeles,* supra.)

These objects must be accomplished by constitutional methods; a desirable end cannot be promoted by prohibited means. (*Meyer vs. Nebraska,* supra.)

The attempt to justify the law or any part of it, on the ground that it is necessary for the protection of the public health, morals or safety, if such be the position of counsel, must fail.

The provisions of the law have no real or substantial relation to these objects, and the purpose of the law is declared expressly to be otherwise. If such be counsel's position, we answer in the language of the Court in *Mugler vs. Kansas,* 123 U. S. 623, at p. 661.

> "There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, *Sinking Fund Cases,* 99 U. S. 718, . . the courts must obey the Constitution rather than the lawmaking department of the government, and must, upon their own responsibility, determine, whether in any particular case, these limits have been passed. 'To what purpose,' it was said in *Marbury vs. Madison,* 5 U. S. 1 Cranch, 137, 167, 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon

> the inquiry whether the Legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

The Hawaii law, as said by the Court below, "in both spirit and purpose abridges the privileges and immunities of citizens of the United States and deprives them of liberty and property without due process of law."

We respectfully submit that the Writ of Certiorari should be denied.

Dated at Honolulu, this 29th day of June, A. D. 1926.

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JOSEPH LIGHTFOOT,

.....

JOSEPH B. POINDEXTER,

Attorneys for Respondents.

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IN THE

Supreme Court

OF THE

United States

OCTOBER TERM, 1926

No. 465

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LEWIS, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,
Petitioners,

vs.

T. TOKUSHIGE, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF

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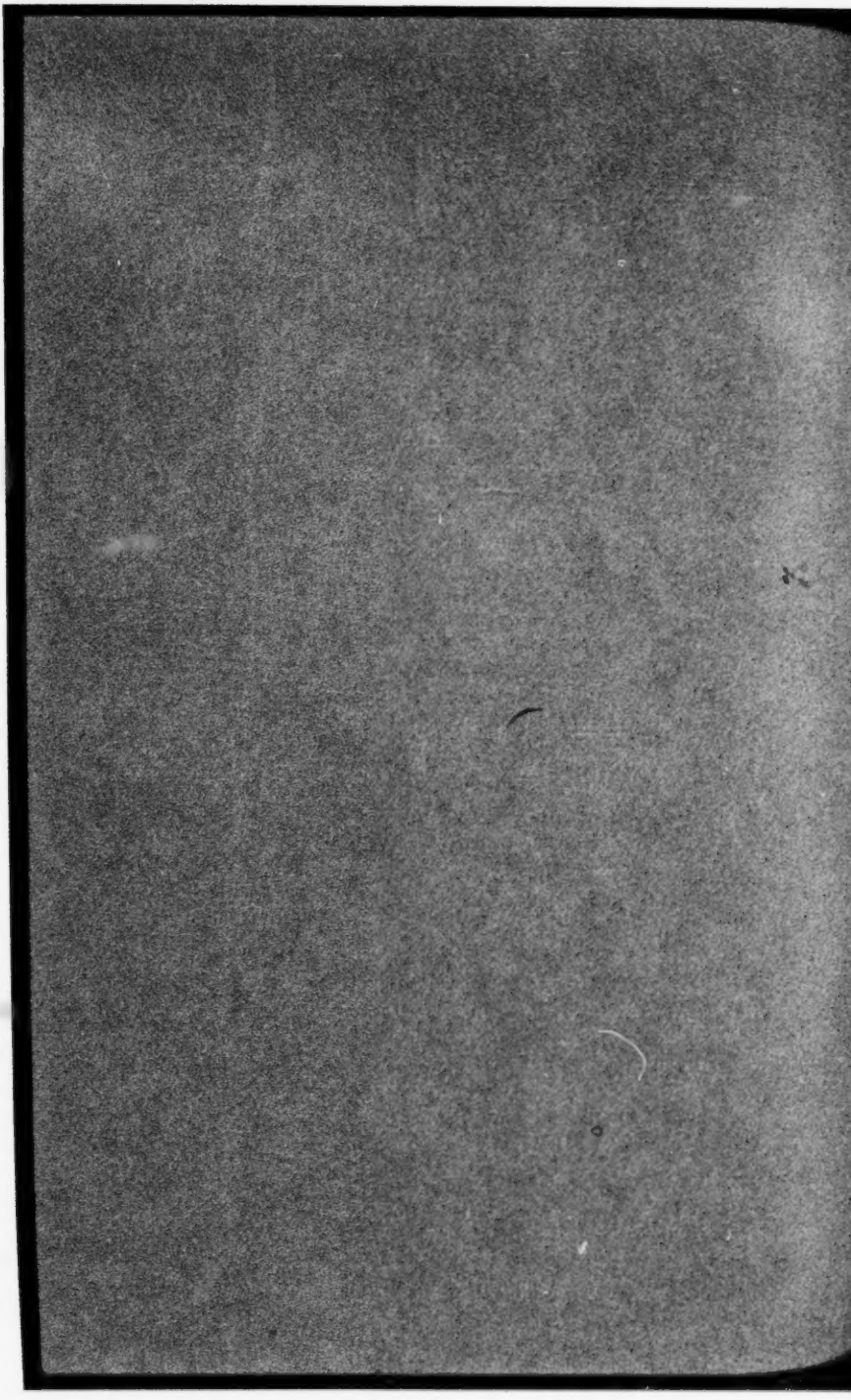

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1926

No. 465

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,
Petitioners,

vs.

T. TOKUSHIGE, et al.,
Respondents.

RESPONDENTS' BRIEF ON WRIT OF CERTIORARI

STATEMENT OF THE CASE

A proper consideration of the question of the constitutionality of Chapter 32 of the Revised Laws of Hawaii of 1925 as amended by Act 152 of the Session Laws of Hawaii of 1925 relating to Foreign Language Schools requires that we should have clearly in mind the situation that obtains in Hawaii relative to its system of schools. An examination of the

law will show that the several schools of the Territory are classified and the different classes defined. These classes are:

1. PUBLIC SCHOOLS. Section 309 of the Revised Laws of Hawaii of 1925, provides as follows:

> "All schools established and maintained by the Department (of Public Instruction) in accordance with law are public schools. All other schools established and conducted in compliance with law are private schools, irrespective of the hours during which the session shall take place."

Section 315, provides as follows:

> "The English language shall be the medium and basis of instruction in all public and private schools within the Territory, *and any school where English is not the medium and basis of instruction shall not be recognized as a public or private school within the provisions of this chapter, and attendance thereat shall not be considered attendance at school in compliance with law.* PROVIDED, however, that the Hawaiian language shall be taught in addition to the English in all normal and high schools of the Territory; and that, where it is desired that another language shall be taught in addition to the English language, such instruction may be authorized by the department, by direct order in any particular instance. PROVIDED, further, that instructions in such courses shall be elective."

Section 324, provides that:

> "The attendance of all children from six to fourteen years of age at either a public or private school is obligatory and it shall be incumbent upon all parents, guardians and others having the responsibility of children of such ages to send them to some such school."

Section 326 provides penalties for non-attendance at school.

II. PRIVATE SCHOOLS. Section 313 provides for the establishment of private schools and is as follows:

"Any person or persons desiring to establish a private school within the Territory of Hawaii shall, prior to the establishment thereof, make an application in writing to the department of public instruction of the Territory, which application shall be signed by the applicant or applicants and shall state in substance (1) the name or names of the person desiring to establish such school; (2) the proposed location thereof; and (3) the course of instruction and the languages in which such instruction is to be given."

"Upon the receipt and approval of such application, the department of public instruction shall issue to the person or persons applying therefor a permit in form to be by it approved, authorizing the establishment of such school; and no private school shall be established within the Territory except in conformity with this chapter."

"Attendance at any school established or maintained without complying with the terms of this section shall not be considered attendance at a public or private school within the meaning of this chapter. The department may, from time to time, require regularly established private schools to submit reports in such form as it may deem proper. Failure to comply with the provisions of this section shall constitute an offense punishable, upon conviction, by a fine not exceeding ten dollars for each offense."

III. FOREIGN LANGUAGE SCHOOLS. The law relating to these schools is contained in Chapter 32 of the Revised Laws of Hawaii, 1925, as amended by Act 152 of the Session Laws of Hawaii of 1925. A copy of the Acts as amended, is attached, as Exhibit "A," to the Bill (*Record pages* 56 *to* 66.)

An examination of these laws shows that attendance at a Foreign Language School (which can be conducted for but one hour per day) is not the equivalent of attendance at a public or private school, and it follows that all the children attending a Foreign Language School must also attend a public or private school.

The Foreign Language Schools are supported and maintained entirely by tuition fees and by private subscription. (*Record page* 49.) The government contributes not a single cent for the support and maintenance of these schools. Indeed, the government is prevented from so doing by the provision of Section 53 of the Organic Act providing as follows:

> ". . . . nor shall any public money be appropriated for the support or benefit of any sectarian, denominational or private school or any school not under the exclusive control of the government."

History of the Foreign Language Schools. The first Foreign Language School was established in April, 1896. It seems that a Japanese Christian minister, the Reverend Okumura, found a little girl at the porch of his church and the reverend gentleman asked her if she had come with her mother. Her reply was

"Me mama hanahana yokonai."

which the reverend gentleman found meant "My mother is working and therefore cannot come." This incident brought home to the clergyman the fact that Japanese children were being brought up in Hawaii with no knowledge of the language of their ancestors; that parents of children could not understand the language of their children nor be understood by them, and this incident led to the establishment of Foreign Language Schools.

From these small beginnings, the Japanese Language Schools increased, until at present there are 146 Japanese Language Schools conducted by more than 5000 persons having property worth $250,000, employing 300 teachers and instructing 20,000 pupils. (*Record pages* 14 *and* 15.) In addition to the reason above given for the establishment of Foreign Language Schools, namely, that the children could not understand the language of their parents nor could the parents understand the language of their children, the necessity for the children of Japanese ancestry being familiar with the language of their ancestors will immediately appear. Practically all the Japanese who emigrated to Hawaii were of the laboring class. They were "hewers of wood and drawers of water"—persons who were accustomed to make a living by the sweat of their brows. When they came to Hawaii, they quickly realized the importance of education, and availed themselves of the opportunities offered by the government to that end. There is no race of people in Hawaii more anxious for the welfare of its children than the Japanese. They not only send their children to the government

schools but avail themselves of the opportunities for higher education; and our high schools and university are largely attended by pupils of the Japanese race.

When these pupils graduate from high school and university, they naturally look around for "white collar jobs," and there is not sufficient employment of this kind to go around. It is, therefore, a matter of vital importance that these children educated in English should have the additional opportunity for success in life afforded them by a knowledge of the Japanese language. A person knowing English and also knowing the Japanese or Chinese languages has a tremendous advantage, especially in the countries of the Pacific, over those being familiar with but one language, and it is largely for this reason that the Japanese of the Territory desired instruction for their offspring in the Japanese language and sent their children to the Japanese Language Schools.

Many of the Japanese Language Schools conduct kindergartens in connection with their schools. (*See paragraph* 6 *of the Petition, pages* 15 *to* 46.) The basic wage of a laborer on the sugar plantations is one dollar per day, and it follows that where a man has a wife and family of children, the family cannot be supported on this wage, and it is necessary for the wife to work in the canefields also. The small children of such parents therefore spend their time when their parents are at work in playing on the public highways, and often associating with very undesirable children. Accordingly, the Japanese Language Schools have provided kindergartens, which act as

a kind of "creche" for these children during the time when their parents are at work. Under the law and the regulation of 1925, these kindergartens must be abolished and the children allowed to play on the public highways, thereby endangering the safety of themselves and others.

Legislative attacks on the schools. In 1919, when many of our young people returned from service with the colors, it was but natural that they should be imbued with a spirit of intense patriotism, and it was likewise but natural that they should seek to "Americanize" the communities in which they dwelt. The experience of the war had shown that very many of our young men who were called to the colors were unable to understand the orders given them in the English language by their officers, and it was with laudable intent that the young people sought to remedy this condition. Accordingly, in the legislative session of 1919, a bill was introduced relating to Foreign Language Schools in the Territory of Hawaii (*House Bill No.* 235, *Legislature of* 1919), containing very drastic provisions against the schools; but the bill was defeated.

THE ACT OF 1920. At a special session of the legislature of the Territory held in 1920, a law was passed relating to "Foreign Language Schools and teachers thereof." This is known as Act 30, Session Laws 1920, and is set forth in full in the appendix to petitioners' brief. An examination of this law shows the following:

(a) It applies to any school conducted in any language other than the English or Hawaiian languages, except Sabbath schools.

(b) No person shall conduct a Foreign Language School unless he has obtained a permit from the Department of Public Instruction so to do.

(c) No person shall teach in a Foreign Language School unless he has obtained a permit so to do from the Department.

(d) No person shall exercise or perform administrative powers at any school without a permit.

(e) No permit to teach shall be granted until the Department is satisfied that the applicant for the same is possessed of the ideals of democracy, knowledge of American history and institutions, and knows how to read, write and speak the English language.

(f) Before issuing a permit to conduct Foreign Language Schools or to teach in such school, the Department shall require the applicant for such permit to sign a pledge to the effect that if granted a permit he will abide by and observe the terms of this law and the regulations and orders of the Department and will direct the minds and studies of his pupils so as to make them good American citizens.

(g) No Foreign Language Schools shall be conducted before the school hours of the public schools nor during the hours when public schools are in session, nor shall any pupil attend a Foreign Language School for more than one hour each day, nor exceeding six hours in any one week, nor exceeding thirty-eight weeks in any school year. The Department is given authority to modify the terms of this requirement if it deems that it can do so consistently with the declared objects of this Act.

(h) The Department shall have full power from time to time to prescribe the course and courses of study and the text books to be used, but no text book shall be furnished at the expense of the Department.

(i) If the Department shall at any time become satisfied that any holder of a permit to conduct a Foreign Language school or teach therein does not possess qualifications required by the Act or shall have violated or failed to observe any of the provisions of the Act or any regulations or orders of the Department, the Department may revoke such permit after notice and the decision of the Department shall be final.

(j) Any person who shall conduct a Foreign Language School or shall teach in a Foreign Language School, contrary to the provisions of the Act, or who shall violate any of the terms thereof, or any of the regulations or orders of the Department, shall upon conviction, be punished by a fine not to exceed $25.00, each day's violation to be deemed a separate offense.

(k) The Act should take effect on the 1st day of July, 1921.

THE REGULATIONS OF NOVEMBER 18, 1922. In November, 1922, the Department of Public Instruction, pretending to act under the powers conferred by Act 30 of the Session Laws of 1920, passed regulations relating to Foreign Language Schools, and under the pretense that they were authorized by that Act, attempted to eliminate the first and second grades of the Foreign Language Schools by providing that no pupil should attend those schools unless

they had satisfactorily completed the first and second grades of the public school courses or courses equivalent thereto. The regulation further provided that after certain dates all new text books used in elementary Foreign Language Schools should be based upon the principle that the pupil's normal medium of expression is English, and shall contain, as far as practicable, English equivalents for foreign words and idioms. The resolution is as follows:

"The Department of Public Instruction, in order to safeguard the health and to promote the Americanism of the pupils of the public schools, and as empowered by Act 30, Session Laws, 1920, hereby adopts, as part of its rules and regulations, the following:

1. The course and courses of study in all foreign language schools shall be based upon the principle that every pupil shall have first satisfactorily completed the first and second grades of the American Public School, or courses equivalent thereto, before attending any foreign language school.

2. The procedure for putting into effect the course and courses of study based upon this principle shall be as follows:

a. Beginning January 1, 1923, and thereafter up to September 1, 1923, every pupil shall have first satisfactorily completed the American public school first grade, or a course equivalent thereto, before attending any foreign language school.

b. Beginning September 1, 1923, and thereafter every pupil shall have first satisfactorily completed the American public school first and second grades, or courses equivalent

thereto, before attending any foreign language school.

3. Beginning September 1, 1923, and thereafter, for grades one, two and three, and beginning September 1, 1923, and thereafter for grades four and above; all new text books used in elementary foreign language schools, shall be based upon the principle that the pupil's normal medium of expression is English and shall contain, as far as practicable, English equivalents for foreign words and idioms.

THE LAW OF 1923. The legislature, in its session of 1923, passed an act relating to Foreign Language Schools, Act 171, which is set forth in full on pages XI to XII of the appendix to petitioners' brief. This Act amended certain sections of Act 30, Session Laws of 1920, and added new provisions.

The following are the principal features of the amendments and additions:

(a) The definition of "Foreign Language Schools" was extended to "all subdivisions and activities under the direction, management or supervision of any Foreign Language School whatever language shall be used in such subdivision and|or activities shall be subject to the provisions of this Act." (Thus making the Act apply to kindergartens and social activities conducted by the Foreign Language Schools.)

(b) After May 5, 1923, all permits theretofore issued should be of no force or effect.

(c) After September 1, 1923, no permit should be issued without a fee being paid therefor based on the school attendance computed on the average at-

tendance of the previous year at the rate of One Dollar per pupil.

(d) On September 1, 1923, and annually thereafter, all permits in order to be valid must be renewed and can only be renewed upon payment of the fees above referred to.

(e) The Department shall not be required to renew a permit for the conduct of a Foreign Language School in the conducting of which there has been a violation of the terms and provisions of this Act.

(f) All fees are to be paid in to the Treasury of the Territory and the money so paid is appropriated to be expended in enforcing and carrying out the provisions of this Act.

(g) If at any time the funds arising from the fees or from royalties, commissions or other means in connection with the sale of Foreign Language School text books shall make it possible, the Department is authorized to reduce the fee of One Dollar.

(h) Every person conducting a Foreign Language School shall file with the Department a sworn list of all pupils in attendance, stating the name, sex, parents or guardians, place of birth and residence of each child, the Department being given the power to modify this requirement.

(i) The object of the Act is declared to be the promotion of the Americanization of the pupils.

(j) The Department is given full power from time to time to prescribe by regulations (1) the subjects and courses of study; (2) the entrance and attendance prerequisites or qualifications of education, age, school attainment, demonstrated mental

capacity, health and otherwise; (3) the text books to be used, and it is also provided that up to September 1, 1923, every pupil shall have first satisfactorily completed the American Public School first grade or a course equivalent thereto before being allowed to further attend any Foreign Language School, and beginning September 1, 1923, and thereafter, every pupil shall have first satisfactorily completed the second American Public School course or course equivalent thereto, before being allowed to attend or further attend the Foreign Language Schools.

(k) After September 1, 1923, for grades one, two and three, and after September 1, 1924, for grades four and above, all new text books shall be based upon the principle that the pupils' normal medium of expression is English and shall contain, as far as practicable, English equivalents for foreign words and idioms.

(l) The Department is authorized to prepare text books for the use of the Foreign Language Schools and to enter into an agreement or agreements for publication and sale of the same. All royalties, commissions and moneys received in connection with the publication and sale of the text books are to be paid into the Treasury and are reappropriated to the Department to be expended for the purpose of this Act.

(m) No subjects of study shall be taught, nor course of study followed, nor entrance or attendance qualifications required, nor text books used, other than as prescribed or permitted by the Department.

(n) The regulations theretofore adopted by the Department and contained in section 7 of this Act shall be in force until superseded in whole or in part by others made by the Department.

(o) The Department is authorized to employ Inspectors of Foreign Language Schools and to inspect the buildings, equipment, records and teaching thereof and the text books used therein.

(p) A permit to conduct a Foreign Language School or to teach therein may be revoked by the Department without a hearing being granted to the licensee.

(q) If any section of the Act shall be declared unconstitutional or invalid, it shall not affect the validity of the Act as a whole.

(r) The Act should take effect upon its approval, May 2, 1923.

THE ACT OF 1925. The legislature of 1925 passed another act relating to Foreign Language Schools, being Act 152 of that session and which is given in full on pages XII to XV of the appendix to petitioners' brief. This Act was amendatory of the Act of 1920 and 1923. The principal amendments are as follows:

(a) After May 10, 1925, and before the first day on which any Foreign Language School shall be conducted in any school year or unexpired part thereof, the fee of One Dollar per pupil shall be paid.

(b) The amount of the fee was to be determined by the Department from such information as it may have.

(c) All officers, teachers, members of any committee or governing board of any Foreign Language School, any corporation or voluntary association of persons, all members or associates of such corporation, association or group, shall be deemed to be participants in conducting such school.

(d) In case any school shall be conducted without the fee being paid, the Territory may recover such fee in a civil action against any person, persons or corporation who or which so conducted or participated in conducting such school, and if the conducting is participated in by a corporation or a voluntary association, a civil action may be brought against such corporation or association in its corporation or association name without joining any of the individual defendants who may be liable for such fee. Process served upon any officer or teacher, or any member of a committee or governing board, or and any member or associate of such school, shall be valid and judgment may be recovered against the corporation or association, and may be enforced against the property of the corporation or the joint property of the members or associates of such association or group and against the individual property of any one of the officers, teachers, members of any committee or governing board, or members or associates of such school, corporation, association or group, who shall have been served with process or who shall have appeared in the action in the same manner and to the same extent as if all had been named as defendants.

(e) The civil and penal remedies provided in the Act shall be concurrent and not exclusive of each other.

(f) No injunction shall issue, nor shall suit be maintained in any court for the purpose of restraining the determination or collection of any such fee or the prosecution of any penal proceeding for the conducting or participating in conducting such school without such fee having been paid.

(g) Any payor of any such fee may pay the same under protest and bring suit for its recovery.

(h) Any person who shall conduct or participate in conducting a Foreign Language School, or who shall teach in a Foreign Language School, contrary to the provisions of the Act, or who shall violate or participate in violating any of the provisions thereof, or of the regulations or orders of the Department, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $25, each day's violation to be deemed a separate offense.

(i) The Act took effect upon its approval, April 29, 1925.

THE REGULATIONS ADOPTED BY THE DEPARTMENT, JUNE 1, 1925

On June 1, 1925, the Department adopted certain rules and regulations to become effective on and after September 1, 1925. A copy of these regulations is attached to the petition as Exhibit "B." (*Record, pages* 66 *to* 68.)

These regulations provided,

(a) That any Foreign Language School whose text books and course of study are approved by the Department may admit to any grade any pupil who is in regular attendance at any public school of the Territory or any approved private school. (It will be noticed that under the provisions of this Act taken in conjunction with Section 390 of the Laws of 1925, it prevents the Foreign Language Schools from conducting kindergartens as kindergarten pupils do not attend the government schools or schools having an equivalent curriculum.)

(b) The Department approves a primary course of two years and an elementary course of six years.

(c) The Foreign Language Schools may conduct a high school course of two years or more for pupils who have satisfactorily completed the elementary course.

(d) Certain text books to be prepared before September 1, 1925, containing as far as practicable English and Japanese versions of each lesson, are adopted for the first and second grades of the primary grades.

(e) Certain text books are approved for the elementary course, years one to six.

(f) No text book is prescribed for the high school course.

(g) By the end of the second year of the high school course, the pupils should have a reading knowledge of not less than 2000 Chinese characters.

To test the constitutionality of the foregoing statutes and the regulations of the Department of Public Instruction, the petitioners below filed their bill

for an injunction in the District Court of the United States for the District and Territory of Hawaii, (*Record, pages* 3-68), and prayed for the allowance of a preliminary injunction. (*Record, pages* 89-98.)

The defendants objected to the allowance of the preliminary injunction, (*Record, pages* 98-124), but the preliminary injunction was allowed by the Honorable John T. DeBolt, Judge of said United States District Court, on July 21, 1925. (*Record, pages* 128-130.) The preliminary injunction was issued on said last mentioned date. (*Record, pages* 131-133.)

The defendants filed exceptions to the order granting preliminary injunction. (*Recrod, pages* 143-144.)

From the order granting temporary injunction, an appeal from taken to the Circuit Court of Appeals of the Ninth Circuit. (*Record, pages* 149-150.)

The Circuit Court of Appeals of the Ninth Circuit affirmed the judgment of the court below, McCamant, J., dissenting.

And the case is now before this court on certiorari.

ARGUMENT

ACT 30 OF THE SESSION LAWS OF 1920, AS AMENDED BY ACT 171 OF THE SESSION LAWS OF 1923 AND BY ACT 152 OF THE SESSION LAWS OF 1925, IS UNCONSTITUTIONAL AND VOID, AS BEING IN CONTRAVENTION OF THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES.

I.

THE STATUTE IN QUESTION UNREASONABLY INTERFERE WITH THE FUNDAMENT-

AL RIGHT OF PARENTS AND GUARDIANS TO DIRECT THE UPBRINGING AND EDUCATION OF CHILDREN UNDER THEIR CONTROL.

As we understand the decisions of this court in the case of Meyers vs. Nebraska, 262 U.S. 390, Bartels vs. Iowa and companion cases, 262 U.S. 404, Pierce vs. Society of Sisters, etc., 268 U.S. 510, and the other cases on the subject, hereinafter particularly referred to, the fundamental principle, as therein laid down, is that parents and guardians have the right, guaranteed by the Constitution, to direct the upbringing and education of children under their control, and this right or liberty may not be interfered with by legislative action that is arbitrary or without reasonable relation to some purpose within the competency of the state to enact.

The acts above referred to are valid, if at all, as legislative enactments under the police power of the state. This power, as applied to legislation concerning schools, has frequently been the subject of judicial decision and we beg to call attention to the following cases in which the police power, as relating to education, has been discussed by appellate courts:

COLUMBIA TRUST COMPANY v. LINCOLN INSTITUTE OF KENTUCKY, 138 Ky. 804, 129 S.W. 113.

The commonwealth of Kentucky had passed an act to the effect that it shall be illegal for any person, company, etc., to operate or maintain any industrial school, college or institute where farming or other occupation is taught in its course of study

or instruction, where such person, etc., owns, operates or controls 75 acres of land, unless such person, etc., shall obtain the consent of a majority of the legal voters residing in the voting precinct where such school is to be maintained or operated in the manner provided.

The Lincoln Institute of Kentucky was operating a school for colored persons and owned more than 75 acres of land. The school had certain moneys in the hands of the Columbia Trust Company which it sought to obtain, but was refused by the Trust Company on the ground that the institute had not complied with the provisions of the statute above referred to. The institute then commenced an action against the Trust Company for the recovery of the money on the ground that the statute was unconstitutional. Judgment was obtained in favor of the institute, and an appeal taken to the Supreme Court of Kentucky.

The Court, citing the case of Com. v. Fowler, 96 Ky. 171, 33 L.R.A. 839, 28 S.W. 787, said:

> "Everyone has the right to follow an innocent calling without permission from the government. He may do with his own whatever he pleases, so that he injure no one else. We agree with the learned counsel that 'the doctrine of legislative permission, as a condition precedent to the conduct of any useful or harmless business, is grossly repugnant to those obvious principles of human right which lie at the foundation of just government among men. So, then, without governmental interference or consent, we say the farmer may till his soil, the merchant may buy and sell, the lawyer and the doc-

tor practise their professions, and the druggist and pharmacist compound their medicines.' In the case of Com. v. Bacon, 13 Bush, 210, 26 Am. Rep. 189, there was involved the validity of a statute which provided that it should be unlawful for anyone, without the consent of the directors of the Bourbon County Agricultural Society, to open a lot, stable, shed, or other place during the continuance of the society's fairs, for the purpose of receiving, for pay, horses or vehicles of any kind; or for any person or persons to permit the use of his lot, stable, shed, or place for any such purposes. Among other things, this court said, in the opinion holding the act invalid: 'The effect of the act then is to restrict the right of one person to use and enjoy his property in a particular manner, that another may use his in that manner to greater profit than he could if each was left free to use his own as he pleased. In this country, where the right of the citizen to acquire, hold, and enjoy property is guaranteed by the fundamental law, it would seem that the statement of the proposition is enough to refute it.'

"It is useless to multiply authorities on so obvious a proposition. If the teaching of the young to be useful, upright, Christian citizens is not inimical to the public safety, public morals, or the public health, then it must follow that an act which seeks either to prohibit it, must be invalid. It is difficult to find language to make plainer that which is so obvious as is the proposition before us. The purposes of the institution under discussion include the whole circle of the solid virtues with which youth may be endowed. Undoubtedly, it is a substantial good to educate the youth of the state; and such is the declared

policy of the Constitution. Section 183 provides: 'The general assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state.' It cannot, then, be in any way injurious to the public to aid in forwarding the great educational policy which the people themselves have declared in their fundamental law,—the giving to every young man and woman in the commonwealth a sound education. And when academic education is supplemented by religious training and special instruction in the agricultural and mechanical arts and sciences, it seems to us that it is contrary to the most obvious public policy that an institution which affords such an education should be in any way blocked or impeded. What good reason can be given for prohibiting the exercise of such a charity as that which we have under discussion, unless it can be shown that education, supplemented by religious training, may be in some way an evil to society? Does not the mind of every virtuous and rightthinking person at once admit that the contrary is true? Do we not know that religious educational training has a tendency to make men more industrious, more virtuous, and better generally, morally and physically? In other words, better, wiser, and more useful citizens. What would be thought of an act which prohibited the farmer from cultivating a piece of land of greater extent than 75 acres, without the permission of his neighbors? By what argument could an act be supported which prohibited a manufacturer from working more than a given number of artisans? And yet it is seriously contended that a school which seeks to make religious, upright, educated citizens may be prevented under the

police power of the state as a public nuisance. EDUCATION STRENGTHENS THE MIND, PURIFIES THE HEART, AND WIDENS THE HORIZON OF THOUGHT. IT MAGNIFIES THE DOMAIN OF HOPE, MULTIPLIES THE CHANCES OF SUCCESS IN LIFE, AND OPENS WIDE THE DOOR OF OPPORTUNITY TO THE POOR AS WELL AS TO THE RICH. IT MAKES MEN BETTER HUSBANDS, BETTER FATHERS, AND BETTER CITIZENS."

BEREA COLLEGE v. KENTUCKY, 211 U.S. 43.

In this case the commonwealth of Kentucky enacted a statute providing that

"It shall be unlawful for any person, corporation, etc., to maintain any college, school or institution where persons of the white and colored race are both received as pupils for instruction; and any person, etc., who shall operate any such college, shall be fined $1000."

The college conducted a school in contravention of the term of this statute. It was tried, found guilty, and fined $1000. From the conviction the college appealed to the Supreme Court of Kentucky on the ground that the statute was unconstitutional, but the conviction was affirmed. Error was then taken to the Supreme Court of the United States, which Court affirmed the conviction on the ground that Berea College was a corporation, and therefore its powers under its charter could be modified by the state.

Mr. Justice Harlan wrote a very strong dissenting opinion, in which he was joined by Mr. Justice Day. At the conclusion of the opinion Mr. Justice Harlan says:

"In my judgment the court should directly meet and decide the broad question presented by the statute. It should adjudge whether the statute, as a whole, is or is not unconstitutional, in that it makes it a crime against the state to maintain or operate a private institution of learning where white and black pupils are received, at the same time, for instruction. In the view which I have as to my duty I feel obliged to express my opinion as to the validity of the act as a whole. I am of opinion that, in its essential parts, the statute is an arbitrary invasion of the rights of liberty and property guaranteed by the 14th Amendment against hostile state action, and is, therefore, void.

"The capacity to impart instruction to others is given by the Almighty for beneficent purposes; and its use may not be forbidden or interfered with by government,—certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety. The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property,—especially, where the services are rendered for compensation. But even if such right be not strictly a property right, it is, beyond question, part of one's liberty as guaranteed against hostile state action by the Constitution of the United States. This court has more than once said that the liberty guaranteed by the 14th Amendment embraces 'the right of the citizen to be free in the enjoyment of all his facuties,' and 'to be free to use them in all lawful ways.' Allgeyer v. Louisiana, 165 U. S. 578, 41 L.ed. 832, 17 Sup. Ct. Rep. 427;

Adair v. United States, 208 U. S. 161, 173, 52 L.ed. 436, 442, 28 Sup. St. Rep. 277."

* * * * * * *

"Of course, what I have said has no reference to regulations prescribed for public schools, established at the pleasure of the state and maintained at the public expense. No such question is here presented and it need not be now discussed. My observations have reference to the case before the court, and only to the provision of the statute making it a crime for any person to impart harmless instruction to white and colored pupils together, at the same time, in the same private institution of learning. That provision is, in my opinion, made an essential element in the policy of the statute, and, if regard he had to the object and purpose of this legislation, it cannot be treated as separable nor intended to be separated from the provisions relating to corporations. The whole statute should therefore be held void; otherwise, it will be taken as the law of Kentucky, to be enforced by its courts, that the teaching of black and white pupils at the same time, even in a private institution, is a crime against that commonwealth, punishable by fine and imprisonment.

"In my opinion, the judgment should be reversed upon the ground that the statute is in violation of the Constitution of the United States."

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD v. McKELVIE, 175 N.W. 531.

This was a suit for an injunction by the Lutheran Synod against the Governor of the State of Nebraska to restrain the enforcement of a statute providing that no person shall, in any private, etc., school,

teach any subject to any person in any language other than English, and that languages other than English may be taught as languages only after pupils shall have obtained and successfully passed the eighth grade as evidenced by a certificate of graduation. The court held that the statute in question was constitutional as applied to the government schools, but it also held that the statute would be unconstitutional as applied to the teaching of foreign languages in private schools. The court says:

"The contention made that, by virtue of section 2 of the act, no foreigner may be taught in any other language than English unless the pupil has successfully passed the eighth grade, as evidenced by a certificate issued by the county superintendent, must be taken as applying only to pupils attending public or private schools, and in the sense that a pupil in such schools may not there be taught any language other than English unless he has attained and passed the eighth grade. If the act should be construed to mean that no person could at any time be taught any other language than English unless possessed of a certificate of graduation issued by the county superintendent, it would be discriminatory as being an unreasonable exercise of the police power, and interfering with individual liberty.

"If the law means that parents can teach a foreign language, or private tutors employed by men of means may do so, but that poorer men may not employ teachers to give such instruction in a class or school, it would be an invasion of personal liberty, discriminative, and void, there being no reasonable basis of classification; but

> if such instruction can be given in addition to the regular course, and not so as to interfere with it, then equality and uniformity results, and no one can complain."

The statute in question was held to be constitutional and the case was taken to this court on error, where it was reversed on the authority of Meyer vs. Nebraska, infra, 269 U. S. 404, 67 L.ed. 1047.

MEYER vs. STATE, 187 N.W. 100.

This was a criminal prosecution under a statute of Nebraska wherein the defendant, Meyer, was found guilty of a violation of the Nebraska statute providing that no person shall in any private denominational or parochial public school teach any subject to any person in any language other than the English language and providing that languages other than the English language shall not be taught in such schools until after the pupil has attained and satisfactorily passed the eighth grade. The constitutionality of the act was attacked by Meyer, but the statute was sustained.

Mr. Justice Letton and Chief Justice Morrisey dissented on the seventh paragraph of the syllabus, which paragraph reads as follows:

> "The statute prohibiting the teaching of foreign languages in the schools was intended to prohibit the teaching of such language whenever the pupils of the school should be assembled for the purpose of receiving instruction and was not limited, in its aim, to those school hours only which should be set aside in the teaching of the common school branches."

The dissenting opinion, we think, will appeal to the Court as a clear and succinct statement of the

law, and it embodies the contentions of the petitioners in the case at bar. It seems that in Nebraska, as in Hawaii, the community was suffering from "mob psychology." The dissenting opinion is as follows:

LETTON, J. (dissenting). "Without regard to the conclusion in the case, I dissent from the doctrine of the seventh paragraph of the syllabus and that portion of the opinion expressing the same view. This in effect overrules the very recent opinion of this court in Nebraska District, E.L.S. v. McKelvie, 104 Neb. 93, 175 N.W. 531, 7 A.L.R. 1688. The matter is of grave importance, since it involves the question as to the extent that a Legislature may infringe upon the fundamental rights and liberty of a citizen protected by the state and federal constitutions. I am unable to agree with the doctrine that the Legislature may arbitrarily, through the exercise of the police power, interfere with the fundamental right of every American parent to control, in a degree not harmful to the state, the education of his child, and to teach it, in association with other children, any science or art, or any language which contributes to a larger life, or to a higher and broader culture."

"Educators agree that the period of early childhood is the time that the ability to speak or understand a foreign, or a classic, language is the most easily acquired. Every parent has the fundamental right, after he has complied with all proper requirements by the state as to education, to give his child such further education, in proper subjects as he desires and can afford. As was pointed out in Nebraska District, E.L.S. v. McKelvie, supra, the legitimate object of the

statute has been accomplished when the basic and fundamental education of every child in the state has been acquired in the English language, instead of in the language of a foreign country."

"The state has the right to manage and control in all particulars schools maintained by taxation; to place other schools under state supervision and to require the same general standards; but it has no right to prevent parents from bestowing upon their children a full measure of education in addition to the state required branches. Has it the right to prevent the study of music, of drawing, of handiwork, in classes or private schools, under the guise of police power? If not, it has no power to prevent the study of French, Spanish, Italian or any other foreign or classic language, unless such study interferes with the education in the language of our country, prescribed by the statute."

"In State v. Ferguson, 95 Neb. 63, 73, 144 N.W. 1039, 1043, 50 L.R.A. (N.S.) 265, it is said in the opinion of Judge Fawcett:

> " 'The public school is one of the main bulwarks of our nation, and we would not knowingly do anything to undermine it; but we should be careful to avoid permitting our love for this noble institution to cause us to regard it as 'all in all' and *destroy both the God-given and constitutional right of a parent to have some voice in the bringing up and education of his children.*' "

"We have said that the Legislature cannot, under the guise of police regulation, arbitrarily invade personal rights, and that—

> " 'The test when such regulations are . . . in question is whether they have some relation to the public health or public welfare, and

whether *such is, in fact, the end sought to be attained.*' Smiley v. MacDonald, 42 Neb. 5, 60 N.W. 355, 27 L.R.A. 540, 47 Am. St. Rep. 684; In re Anderson, 69 Neb. 680, 96 N.W. 149, 5 Ann. Cas. 421; Union P.R.Co. v. State 88 Neb. 247, 129 N.W. 290; State v. Withnell, 91 Neb. 101, 135 N.W. 376, 40 L.R.A. (N.S.) 398.'"

"Since the restriction cannot be supported on the ground of 'public welfare,' it is now sought to sustain it on the ground of 'public health.' The supposition that this restriction in the statute might have been inserted in the interest of the health of the child is evidently an afterthought. It was not suggested by counsel either in the briefs or at the hearing. It is patent, obvious, and a matter of common knowledge that this restriction was the result of crowd psychology; that it is a product of the passions engendered by the world war, which had not had time to cool. The idea that the Legislature had in mind the protection of the child from overstudy, or lack of recreation, seems far-fetched, when it is realized that outside of city districts only 12 weeks school attendance in a year is required by the law, and that in city districts the hours of study for young children are carefully limited by the boards of education. The statute was construed and upheld (except as to the restriction now reinstated by the majority opinion) in the opinion in the McKelvie case written by me. It was there held (with that exception) to be a proper and salutary measure, upon substantially the same grounds as are now suggested in the majority opinion. The doctrine of stare decisis should be applied, and the former opinion adhered to.

"Legislatures have not always respected personal rights. In State v. Junkin, 85 Neb. 1, 122 N.W. 473, 23 L.R.A. (N.S.) 839, this court was compelled to hold invalid a law restricting free speech in a public assembly. Resistance to the arbitrary power of kings was necessary in days gone by. It seems now to be necessary to resist encroachments by the Legislature upon the liberty of the citizen protected by the Constitution."

MORRISEY, C. J., concurs in this dissent.

The case was taken to this court on error where it was reversed and the statute held to be unconstitutional. (262 U.S. 390, 67 L.ed. 1042). The court says:

"While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. * * * *"

"The American people have always regarded education and acquisition of knowledge as matters of supreme importance, which should be diligently promoted. The Ordinance of 1787 declares: 'Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.' Corres-

ponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the states, including Nebraska, enforce this obligation by compulsory laws."

"Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential, indeed, to the public welfare. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment."

"The challenged statute forbids the teaching in school of any subject except in English; also the teaching of any other language until the pupil has attained and successfully passed the eighth grade, which is not usually accomplished before the age of twelve. The supreme court of the state has held that 'the so-called ancient or dead languages' are not 'within the spirit or the purpose of the act.' Nebraska Dist. v. McKelvie, 108 Neb. 448, 187 N.W. 927 (April 19, 1922). Latin, Greek, French, Spanish, Italian, and every other alien speech are within the ban. Evidently the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

"It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and 'that the English language should be and become the mother tongue of all children reared in this state.' It is also affirmed that the foreign-born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type, and the public safety is imperilled."

"That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all,—to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution,—a desirable end cannot be promoted by prohibited means.

"For the welfare of his Ideal Commonwealth, Plato suggested a law which should provide: 'That the wives of our guardians are to be common, and their children are to be common, and no parent is to know his own child nor any child his parent. . . . The proper officers will take the offspring of the good parents to the pen or fold, and there they will deposit them with certain nurses who dwell in a separate quarter; but the offspring of the inferior or of the better

when they chance to be deformed, will be put away in some mysterious, unknown place, as they should be.' In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between the individual and state were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a state without doing violence to both letter and spirit of the Constitution. The desire of the legislature to foster a homogeneous people with American ideals, prepared readily to understand current discussions of civic matters, is easy to appreciate. Unfortunately experiences during the late war, and aversion toward every characteristic of truculent adversaries, were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the state and conflict with rights assured to plaintiff in error. The interference is plain enough, and no adequate reason therefor in time of peace and domestic tranquility has been shown."

"The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. Nor has challenge been made of the state's power to prescribe a curriculum for institutions which it supports. These matters are not within the present controversy. Our concern is with the prohibition approved by the

supreme court. Adams v. Tanner, 244 U. S. p. 594, 61 L. ed, 1342, L.R.A. 1917F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973, pointed out that mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper. No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition, with the consequent infringement of rights long freely enjoyed. We are constrained to conclude that the statute as applied is arbitrary, and without reasonable relation to any end within the competency of the state."

"As the statute undertakes to interfere only with teaching which involves a modern language, leaving complete freedom as to other matters, there seems no adequate foundation for the suggestion that the purpose was to protect the child's health by limiting his mental activities. It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals, or understanding of the ordinary child."

"The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

"Reversed."

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD v. McKELVIE, 187 N.W. 927.

This is a case much relied upon by the defendants. It was an action for an injunction against the enforcement of the Nebraska law, which has been referred to above. It was decided in April, 1922, at a time when the "crowd psychology" referred to by

Mr. Justice Letton, was still rampant in the State of Nebraska. Again there is a dissenting opinion by Chief Justice Morrissey, which we submit is a sound and sane exposition of the law. The dissenting opinion is as follows:

"Chapter 61, Laws of 1921, in the main, is calculated to prohibit and penalize the teaching, in a school, of languages other than English. The history of the ages dead and gone reveals that every forward step in science and philosophy met with opposition and oftentimes with persecution, but, notwithstanding this opposition, learning spread, the human mind expanded, and knowledge of the arts and sciences reached the multitude. We have been wont to look upon the proscriptions of the past with charity because of the age in which they occurred, but, now, in the twentieth century, the majority opinion sustains a statute as a reasonable exercise of the police power that proscribes the teaching of modern languages, in a school, although it sanctions the teaching of such languages if done by a private tutor, or a parent, in the home. If the teaching of such languages is vicious and harmful, it must be so when done by a private tutor, or by a parent, in the home. If not hurtful to the state when taught by a private tutor or by a parent, in the home, how can it be said to be harmful to the state when taught in a school, when such teaching is not permitted to impair the work of the child in the common branches of learning. I cannot regard as a reasonable exercise of the police power a provision which arbitrarily forbids the acquisition of useful learning—learning that is not harmful in itself, learning that the well to do parent may employ

a private tutor to impart to his child, if not done in a school. The police power has never been held to extend to the prohibition of acts not injurious to society or which cannot reasonably be said to be harmful to the public welfare. It is an arbitrary classification which reason will not support. The provision declaring the English language to be the official language of the state and the provisions requiring the teaching of that language in all schools of the state are proper, and no person complains of them or questions their validity, but those provisions that prohibit the teaching of other languages, in a school, even though such teaching does not interfere with the school course prescribed by proper authority, in my judgment, violate the provisions of both the state and federal Constitution. I, therefore, dissent from the holding announced and adhere to the opinion of this court in Nebraska District of Evangelical Lutheran Synod v. McKelvie, 104 Neb. 93, 175 N. W. 531, 7 A.L.R. 1688, and to the dissenting opinion in Meyer v. State, 107 Neb., 187 N.W. 100."
STATE v. FERGUSON, 144 N.W. 1039.

In this case Ferguson had a daughter attending the government school in the State of Nebraska. He desired his daughter to spend whatever time she could, out of school hours, in the study of music, and did not desire her to study domestic science, which was part of the curriculum of her school. The domestic science was taught in a building some distance from the school, and it was necessary for the daughter to walk to the domestic science building for her class in that subject. This, on the instruction of her father, she refused to do and she was ex-

pelled from school. The father thereupon brought mandamus to compel the reinstatement of his daughter. The writ of mandamus was issued and made perpetual in the Nisi Prius Court, which judgment was affirmed on appeal, where it was held that:

> "The right of a parent to make a reasonable selection from the prescribed course of studies which shall be carried by his child in the free public schools of the state is not limited to any particular school nor to any particular grade in any of such public schools."

and again:

> "The public schools of the state are entitled to the earnest and conscientious support of every citizen. To that end the school authorities should be upheld in their control and regulation of our school system, but their power and authority should not be held to be unlimited. They are required to exercise their authority over and their desire to further the best interests of their scholars, with a due regard to the natural and legal rights of the parents of such children." See also People vs. Olmstead, 27 Barb. 9-13-33.

The whole subject of the constitutionality of the statute relating to private schools is summed up, in 24 R.C.L. 562, as follows:

> "While, as already stated, the power of the legislature over public schools is complete, there is no such power in regard to private schools, nor in fact any power at all in so far as the educational features are concerned. The power of the legislature to regulate or prohibit private schools is subject to the same limitations as the power to regulate private property rights in general. The legislature, under the police power, may regulate education in many respects in

private schools. But the exercise of such police power must not be arbitrary, and must be limited to the preservation of the public safety, the public health or the public morals. The legislature has no power to prohibit or to authorize the voters to prohibit the establishment of a private educational institution, unless it be inimical to public health, public safety or public morals. If the private institution be a corporation any act attempting to regulate it by amending its charter, where the power of amendment was not reserved, comes squarely under the decision in the Dartmouth College case."

We desire to especially call the court's attention to the case of *Society of Sisters of the Holy Name of Jesus and Mary vs. Pierce, Governor of Oregon, and others,* and *Hill Military Academy vs. the same,* 296 Fed. 928. This case is so clearly on all fours with the case at bar that we should feel warranted in submitting our case on it together with the Meyer vs. Nebraska case.

These were suits in equity, the object of which was to declare unconstitutional and void the statute of Oregon enacted under the initiative of November 7, 1922, relating to private schools. It was claimed by the plaintiffs that the act was void as in contravention of the Fourteenth Amendment of the Constitution in that "it trenches upon the privileges and immunities of citizens of the United States; that it deprives them of life, liberty and property without due process of law, and the equal protection of the laws and is violative also of that clause of the Constitution relating to the impairment of obligations on contracts." Plaintiffs asked for injunctive relief,

defendants interposed a motion to dismiss and the case came on for hearing in the District Court of Oregon on March 31, 1924, before Gilbert, Circuit Judge, and Wolverton and Bean, District Judges. On page 935 of the Decision, is the following:

"It is not denied that the state, in its sovereign capacity, is entitled to the exercise of what are termed police powers. What these powers are the courts have not attempted to define precisely. But, without question, they relate to the safety, health, morals and general welfare of the public. 'Both property and liberty,' says the court, in Lichner v. New York, 198 U.S. 45, 53 Sup. Ct. 539, 541 (49 L. ed. 937, 3 Ann. Cas. 1133), 'are held on such reasonable conditions as may be imposed by the governing power of the state in the exercise of those powers, and with such conditions the Fourteenth Amendment was not designed to interfere.'"

"But there is a limit to the manner in which these powers may be exercised by the state. They cannot be exercised arbitrarily and despotically, nor unless there exists a reasonable relation between the character of the legislation and the policy to be subserved. Nor is the state legislature the final judge of the limitations of the police power. Its enactments will be set aside when found to be unwarranted and arbitrary interference with rights protected by the Constitution in carrying on a lawful business or occupation in the use and enjoyment of property. In other words, the exercise of the police power is subject to judicial review, and property rights cannot be ruthlessly destroyed by wrongful enactment. Silz v. Hesterberg, 211 U. S. 31, 39, 29 Sup. Ct. 10, 53 L. ed. 75; Lawton

v. Steele, 152 U.S. 133, 137, 14 Sup. Ct. 499, 38 L. ed. 385; Dobbins vs. Los Angeles, 195 U.S. 223, 239, 25 Sup. Ct. 18, 49 L. ed. 169."

"In elaboration of the principle, the courts may not, however, because of the mere fact that they differ from the Legislature in its views of public policy, or hold views inconsistent with the propriety of the legislation in question, interfere judicially, nor unless the act in question is unmistakably and palpably in excess of legislative power. McLean v. Aransas, 211 U.S. 539, 547, 29 Sup. Ct. 206, 53 L. ed. 315."

"There are certain known callings and occupations that the state may, under and in pursuance of its police powers, regulate by reasonable interposition; but it cannot prohibit their exercise, where to do so will infringe the guaranties of the Fourteenth Amendment. Thus employment agencies may be regulated, but not prohibited. Adams v. Tanner, 244 U.S. 590, 37 Sup. Ct. 662, 61 L. ed. 1336, L.R.A. 1917F 1163, Ann. Cas. 1917D, 973. The right of the individual to work and earn a livelihood may not be prohibited, though the workman be an alien. Truax v. Raich, supra."

"The right to contract in relation to one's business is a liberty that may not be inhibited without entrenchment upon rights guaranteed by the Fourteenth Amendment. Lochner v. New York, supra; Adkins et al v. Children's Hospital, supra. The right to engage in a useful, legitimate business, not harmful or vicious, is protected under the amendment, and cannot be abrogated. Murphy v. California, 225 U. S. 623, 32 Sup. Ct. 607, 56 L. ed. 1229, 41 L. R. A. (N.S.) 153. And the right to teach German along with the grammar school grades may not be imping-

ed upon under the guise of legislative regulation. Meyer v. Nebraska, supra."

"No one questions the proposition that our public schools are subject to a reasonable supervision of the state through its legislature, in the exercise of its police powers, for safeguarding the health, morals, and general weal of the public. Nor is it disputed that, while parents possess a natural and inherent right to the nurture, control and tutorship of their offspring, that they may be brought up according to the parent's conception of what is right and just, decent, and respectable, and manly and noble in life, the state yet stands in the position of *parens patriae* to and may exercise its just powers 'in preparing the child, in future life, to support itself, to serve the state and in all the relations and duties of adult life to perform well and capably its part.' People v. Ewer, 141 N.Y. 129, 133, 36 N.E. 4, 25 L.R.A. 794, 38 Am. St. Rep. 788; State v. Shorey, 48 Or. 396, 399, 86 Pac. 881, 24 L.R.A. (N.S.) 1121."

"The test here is not as to these primordial and long-established principles, and they are referred to only for clarifying the atmosphere, so that we may proceed intelligently to a discussion of the very crux of the cases at bar. The real test is: Has the state, through its legislative functions, the power under the guise of police regulation, to deprive parochial and private school organizations of the liberty and right to carry on their schools for teaching in the grammar grades?"

"The act could not be more effective for utterly destroying the business and occupation of complainants' schools, except, perhaps, the college and higher preparatory grades, if it had

been entitled 'An Act to prevent parochial and private schools from teaching the grammar grades.' This serves to emphasize the seriousness of the controversy. Indeed the simile is no stronger than the argument for the adoption of the measure put it: 'A divided school can no more succeed than a divided nation.' That such is the purpose of the act is obvious and incontrovertible."

"It cannot be successfully combated that parochial and private schools have existed almost from time immemorial—so long, at least, that their privilege and right to teach the grammar grades must be regarded as natural and inherent, as much so as the privilege and right of a tutor to teach the German language with the grammar grades, as was held in Meyer v. Nebraska, supra. The absolute right of these schools to teach in the grammar grades (paraphrasing somewhat the language of the court in the case just cited), and the right of the parents to engage them to instruct their children, we think, is within the liberty of the Fourteenth Amendment."

The motion was dismissed and a preliminary injunction issued.

The cases were taken to this court on appeals, which court, in affirming the decree below, said:

"Under the doctrine of Meyer v. Nebraska, 262 U.S. 390, 67 L. ed. 1042, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reason-

able relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." 267 U.S. 415. 69 Law. ed. 689.

The Circuit Court of Appeals of the Ninth Circuit, in the decision appealed from in the present case, after reviewing the facts as set forth by the bill, says: 11 Fed. (2nd) 710.

"The appeal now before this court is from that decree (that is, the decree granting temporary injunction). If the legislation complained of is unconstitutional, the right of the appellees to maintain this suit is, in our opinion, not open to question. Pierce v. Society of Sisters, 268 U.S. 510. The right of the pupils, against whom the legislation is directed, to acquire a knowledge of the Japanese language and the right of others to teach them that language is equally beyond question. Meyer v. Nebraska, 262 U.S. 390; Bartels v. Iowa, Id. 404."

"It only remains to consider, then, whether the legislation can be upheld and sustained as a proper exercise of the police power of the territory, and in that connection we must remember that we are not now concerned with the public school system established by the territory and maintained at public expense. These foreign language schools are in no sense a part of that system, as they are maintained through

private enterprise, and attendance upon them is not compulsory. The children who attend them are compelled to and do attend the public schools and fully discharge all their duties and obligations in that regard, and when they have done this, we take it for granted that they have an undoubted right to acquire a knowledge of foreign languages, music, painting, drawing and such other accomplishments, not inimicable to good order and good morals, as their parents or guardians see fit to bestow upon them."

"In Berea College v. Kentucky, 211 U. S. 45, a majority of the court held that a state might withhold from its corporations, privileges and immunities which it could not constitutionally withhold from individuals, and affirmed the judgment of the Supreme Court of the State. In a dissenting opinion, conflicting in no wise with the opinion of the majority, Mr. Justice Harlan said:

" 'The capacity to impart instruction to others is given by the Almighty for beneficent purposes and its use may not be forbidden or interfered with by Government—certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety. The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property—especially, where the services are rendered for compensation. But even if such right be not strictly a property right, it is, beyond question, part of one's liberty as guaranteed against hostile state action by the constitution of the United States. This court has more than once said that the liberty guaranteed by the Fourteenth Amendment embraces

"the right of the citizen to be free in the enjoyment of his faculties," and "to be free to use them in all lawful ways." * * * If pupils, of whatever race—certainly, if they be citizens—choose with the consent of their parents or voluntarily to sit in a private institution of learning while receiving instruction which is not in its nature harmful or dangerous to the public, no government, whether Federal or State, can legally forbid their coming together, or being together temporarily, for such an innocent purpose.' "

"Comprehensive and all pervading as the police power is, there are certain rights and certain relations beyond its scope. One of these is the right of a parent to educate his own child in his own way, at least beyond the requirements of the local law. Conceding then, as we must, that the appellees have a right to maintain these foreign language schools; that teachers have a right to teach therein, and that pupils have a right to be taught, how can these comprehensive regulations and prohibitions be sustained?"

"Before obtaining a permit to teach, the applicant must satisfy a territorial officer that he is possessed of the ideals of democracy, a knowledge of American history and institutions, and knows how to read, write and speak the English language. A knowledge of the foreign language is not a prerequisite. He must pledge himself to abide by and observe the terms of the Act and such regulations and orders as the department may see fit to make, and he and his pupils must use only such text books as are compiled and sold by legislative authority. He must so direct the minds and studies of his pupils as will tend to make them good and loyal American citizens,

and this he must accomplish after the pupil has completed the second grade in the common schools, and within one brief hour each day, for not exceeding six days a week and thirty-eight weeks in the year. In other words, in a school conducted primarily for the teaching of a foreign language the pupil must take a course in Americanism; a course not required of any other class of citizens or students. We feel quite safe in saying that if such a system of regulations were enforced by one of our American commonwealths against an American college in which foreign languages are taught, it would shock the conscience of mankind. An attempt is made to justify the Act, however, because of the peculiar conditions prevalent on the Islands. They have a large Japanese population there and it is said that within the next fifteen years a majority of the electorate will be American citizens of Japanese extraction. It is further said that the Japanese do not readily assimilate with other races; that they still adhere to their own ideals and customs and are still loyal to their Emperor. It is a matter of common knowledge that the Japanese do not readily assimilate with other races and especially with the white race. This is in part a matter of choice and in part a matter of necessity, because one cannot assimilate alone. No doubt, the Japanese tongue will be spoken on the Isands for generations yet to come, and no doubt the Japanese will be slow to give up their customs and their ideals, but we took the Islands cum onere and extended the Constitution of the United States there, and every American citizen has a right to invoke its protection. You cannot make good citizens by oppression or by a denial of constitutional

rights, and we find no such conditions there as will justify a departure from the fundamental principles of constitutional law. If the power to so legislate is once conceded, the time and manner of its exercise is largely a matter of legislative discretion over which the courts have little or no control. An attempt was made to justify the foreign language school laws of Nebraska, Iowa and Ohio on similar grounds, but the attempt was unsuccessful."

"'It is said the purpose of the legislation was to promote civil development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and "that the English language should be and become the mother tongue of all children reared in this State.' It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled.

"'That the State may do much, go very far, indeed in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desir-

able end cannot be promoted by prohibited means.' Meyer v. Nebraska, supra."

"For these reasons we are of opinion that the Act in question, in both spirit and purpose, abridges the privileges and immunities of citizens of the United States, and deprives them of liberty and property without due process of law."

"The decree is affirmed."

On this question we have no hesitancy in herewith submitting extracts from the annual address of the Honorable Cordenio A. Severance, former President of the American Bar Association, delivered September, 1922, in San Francisco, on the subject of "The Constitution and Individualism." Among other things the honored gentleman said:

"The wise men who wrote the Constitution did not intend to place the citizen in leading strings. The government is the servant of the people. It is instituted, not to suppress, but to render certain liberties. The constitutions, both federal and state are full of provisions setting bounds to what their respective legislatures may do. In spite of these limitations, the growth of the so-called police power in these later days is a matter of profound concern to all lovers of our country. If legislators are permitted to run riot under the pretended exercise of this power, the constitutional guarantee for the protection of liberty and property will be destroyed."

"If a legislature can by a simple resolution, declare that a business or occupation never before deemed to be affected with a public interest and thus subject to regulation, is in fact so affected, what limits are there to what it may do? The enlargements of the scope of the police

power in recent years has gone far in the direction of a communistic state."

"If we believe in the principles upon which our government was founded, we should scrutinize with jealous care new proposals which affect the liberty of personal action, to see whether they square with the ancient doctrines voiced by our fathers in the Constitution."

We also respectfully call the court's attention to a portion of the address delivered September 2, 1925, at the Annual Meeting of the American Bar Association by the Honorable Charles E. Hughes, former President of the Association, on the subject of Liberty and Law, as follows:

"Yet it is with respect to the freedom of learning that we find a disposition to impose restrictions which cannot fail to give us grave concern. * * * *

"While with a different purpose, we observe the manifestations of the same spirit in the efforts to interfere with instruction in our schools, not to promote the acquisition of knowledge, but to obstruct it. The Supreme Court of the United States has had occasion to deal with such an attempt to control teaching in private schools. Under a statute, forbidding the teaching of any other than the English language to a pupil who had not passed the eighth grade, a teacher was subjected to a criminal prosecution for teaching the German language. Even the Court, with its necessarily limited judicial vision, could see what lay behind such an enactment and condemned it as an unwarranted interference with the constitutional guarantee of liberty. 'Evidently,' said the Court, 'the legislature has attempted materially to interfere with the calling of mod-

ern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own children.' The statute as applied was found to be arbitrary and without reasonable relation to any end within the competency of the state. The same principle was applied in the Oregon School case where the statute under review in substance attempted to interfere with the privilege of instruction in private schools. 'The child,' said the Supreme Court, 'is not the mere creature of the State. Those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligations.' Manifestly the purpose of the statute was not to aid education, but arbitrarily to interfere with the freedom of instruction."

The Oregon School case is discussed in a very interesting article in the November number of the Bar Association Journal, entitled "Islam and the Oregon School Case," to which we respectfully call the court's attention.

II

THE STATUTES IN QUESTION ARE PROHIBITIVE—NOT REGULATORY

Counsel contend that the Nebraska, Iowa, Ohio and Oregon statutes were prohibitory while the statutes of Hawaii are merely regulatory. A statute may be regulatory though its provisions be expressed in prohibitory terms or in mandatory terms or both. The Nebraska, Iowa and Ohio statutes provided that all teaching below certain grades in public and private schools must be in the English language, a mandatory regulation. The Ohio statute further ex-

pressly prohibited the teaching of the German language below the eighth grade. The Oregon statute provided that parents and guardians must send the children under their control to the public schools after September 1, 1926.

No attempt was made in the Nebraska, Iowa or Ohio statutes to control the course of study, text books, entrance requirements or qualifications of teachers, nor was there any interference whatsoever with the conduct of private schools except that the English language should be the medium of instruction and that foreign languages as such should not be taught below certain grades. These were declared unconstitutional by this court as such laws plainly interfere with the right of a parent to direct and control the education of his child.

The Hawaiian statute goes far beyond these statutes in every essential particular; it takes from the parent of a child attending a foreign language school, all control and direction of the education of his child. Complete control of these schools is given to the Department of Education by the law. (Sec. 396, Record, page 63.)

The effect of the law is to make all these private schools in fact public schools in all but the name, though the public contributes not one cent to their support. Indeed, under the provisions of Section 55 of the Organic Act, Revised Laws of Hawaii, 1925, page 80, the legislature is prohibited from appropriating public money for the support or benefit of any school not under the exclusive control of the government. They are prohibited from employing a

teacher, teaching a subject, using a book, admitting a pupil or engaging in any activity of any nature, unless approved by the Department of Education. Nor can such a school be conducted until a permit is granted and an exorbitant fee paid, a condition not imposed on any other private school in the Territory.

And what is the purpose of the law in giving this complete control of these schools to the Department of Education? The statute reads:

> "Sec. 393 (Record, 62). . . . . It is hereby declared that the object of this chapter is to *fully and effectively regulate* the conducting of foreign language schools and the teaching of foreign languages, that the Americanism of the pupil may be promoted. . . . ."

This declaration in the law forecloses discussion as to the object of the law. (U. S. vs. Starn, 17 Fed. 435.)

It is alleged in the bill (Par. IV, Record, 14) that there is nothing taught in these foreign language schools that is un-American or contrary to the ideals of democracy, but the teaching in said school inculcates Americanism in the minds of the pupils and a respect for the institutions of the United States. This was not denied by the petitioners, and on the record stands admitted. Nothing is taught that is inimical to the public welfare. The law is neither necessary nor essential to the proper enforcement of the Territory's public school policy. The hours of attendance at these schools are so arranged (they are conducted but one hour a day) as not to interfere with the attendance by the pupils therein of school age, at the public schools, and all such pupils are

required to and do attend public schools throughout the term thereof; the Japanese language is not taught in the public schools. (Par. XIa of Bill, Record, 49.)

In the public schools, pupils of respondents' schools follow the same course of study and are taught the same lessons as the other pupils therein. There are many children attending the public schools and other private schools from alien families in this Territory, who do not attend the foreign language schools and whose parents speak little or no English and whose ancestral ideals are foreign to American ideals. Yet neither the law nor the Department of Education concerns itself with their Americanism beyond what they are taught in the public schools,—the identical instruction received by the children of respondents in the same schools. In the public schools all are taught the same lessons of Americanism and democratic ideals, which are considered sufficient for a majority of the pupils, yet the minority of the pupils, whose parents desire to fit them for the battle of life by teaching them a language which will be of great benefit to them in their after careers, attend the foreign language schools where they are further regulated, controlled, taxed and "democracized" by a paternalistic government, and this, too, in the face of the admitted fact that nothing un-American is taught in the foreign language schools, and the Americanism of the pupils is advanced, not retarded in these schools. Referring to these regulations, the Court below said:

"We feel quite safe in saying that, if such a system of regulations were enforced by one of our American commonwealths against the American college in which foreign languages are taught, it would shock the conscience of mankind." (Record, 198.)

There seems little justification, indeed, for the solicitude of the school authorities concerning the Americanism of a Japanese child who attends a foreign language school, when no such solicitude is manifested for a Japanese child coming from similar environments who does not attend such a school.

The distribution of the large fund raised by taxation of the foreign language schools among selected officers and the profits from the sale of text books by a favored publisher, may be the answer.

In this connection, an observation by Judge Peckham in *Lochner vs. New York*, 198 U.S. 45, seems pertinent. Speaking for the court in a case involving an Act of the State of New York regulating the hours of employes in bakeries, he said:

"It is impossible for us to shut our eyes to the fact that many laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed from other motives. We are justified in saying so, when from the character of the law and the subject upon which it legislates, it is apparent that the public health or welfare bears but the most remote relation to the law. The purpose of the statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the constitution must be determined from the natural effect

of such statute when put into operation and not their proclaimed purpose."

Section 4 of the Act of 1923 (Sec. 396) (Record, 63) prohibits, after September 1st, 1923, any child from attending a foreign language school until he has completed the first and second grades of the public schools or courses equivalent thereto, and the evident intention of this section is to require that the teaching in the foreign language schools should be in English, as it provides: "All new text books used in elementary foreign language schools shall be based upon the principle that the pupil's normal medium of expression is English and shall contain, as far as practicable, English equivalents for foreign words and idioms." The preceding section requires that all teachers of foreign languages shall know how to read, write and speak the English language.

Wherein, in principle, does this statute differ from the Nebraska statute, which required all teaching in all grades to be in English, and prohibited the teaching of a foreign language to a pupil until he has passed the eighth grade? Surely, the constitutionality of a statute of this character is not to be determined by the age of the pupil to whom it applies. If this be the measure, the Hawaii statute is as objectionable as the Nebraska statute.

In *Meyer vs. Nebraska,* supra, it is stated:

"It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals or understanding of the ordinary child."

Petitioners may reply that this prohibition applies only until changed by the Department of Education and that it has been modified by the Board to exclude from foreign language schools only children of the kindergarten grade,—an essential grade in the system.

Under powers given by this section to the Board to prescribe these same prohibitions and others,—the Board may, under the powers granted, prescribe regulations which would, in effect, prevent the teaching of foreign languages in all grades. The Board may, at will, adopt a regulation prohibiting the teaching of a foreign language, say, until a pupil has completed all grades in a public school below the eighth grade. Such a regulation would parallel the Nebraska statute. This regulation counsel would attempt to justify by the same argument. They would say, "foreign language schools have not been abolished, they are merely regulated." Granted this power, who can say when it will not be exercised?

From the spirit and temper shown by the present school authorities of Hawaii throughout, it is a prediction certain of fulfillment, that some such regulation would be among the first adopted, if this statute be sustained by the courts.

As said in the opinion of the lower court:

> "If the powers to legislate be once conceded the time and manner of its exercise is largely a matter of legislative discretion, over which the courts have little or no control. (*Record*, 199.)

The constitutionality of the statute must be determined by the power conferred, and not by the actions taken by officials under it. The presumption

that public officials will do their duty cannot be indulged in determining whether or not the law violates the Constitution. This is a question of power conferred, and what, as in this case, the Board might do under it; and to be valid, the law must meet every test required by the Constitution, even the most extreme.

Eubank vs. Richmond, 226 U.S. 137; *Lochner vs. New York,* supra; *Repolje vs. Little Rock,* 166 Ark. 617, 267 S.W. 353.

In *Pierce vs. Society, etc.,* supra, p. 534, the Court said:

> "Under the doctrine of *Meyer vs. Nebraska,* 262 U.S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

In Oregon, the attempt was made to compel all children to attend the public schools. Wherein is a difference in principle in the Oregon law from that of Hawaii? In Hawaii the attempt is to make these

foreign language schools in fact public schools. Under the law, absolute and complete control of these schools is given to the Board of Education, the same body that controls and directs the public schools. The control of one is as broad and all-inclusive as the control of the other, except in the foreign language schools the matter of paying the cost of conducting the schools is generously left to the parent. Not only is the complete control given in every essential particular *eo nomine,* but in order to insure that nothing was overlooked, it is provided:

> "All subdivisions and activities under the direction and management or supervision of any foreign language school, whatever language may be used in such subdivision and/or activities, shall be subject to the provisions of this chapter." (Sec. 390, Record, 57.)

If, as decided in *Pierce vs. Society, etc.,* supra, the parent cannot be compelled to submit the education of his child directly to the control of the public school authorities by compelling attendance at the public schools, surely this control cannot be accomplished in the manner attempted in Hawaii. That which the law prohibits directly, may not be done indirectly. (*Little Rock, etc., Ry. vs. Worthen,* 120 U.S. 907.)

III

THE CONSTITUTIONALITY OF DIFFERENT PROVISIONS OF THE STATUTE

Counsel say that this court should sustain such provisions of the law as may be constitutional. This, we submit, is an implied admission that the provisions of the law are so interdependent that they cannot be segregated, and that the law, as a

whole, must fail, as was held by the court below. But we respectfully insist that the law provides a complete system for the control of these schools, for the declared purpose of the Americanism of the pupils, and that the system as a whole, must fall, as it infringes on the liberty guaranteed by the Constitution, and deprives respondents of their property without due process of law.

The sole purpose of the law is the Americanization of the pupils of these schools, though it is admitted that nothing un-American is taught in them. Where a system infringes on the Constitution, a part of the system, though unobjectionable in itself, falls with the system. (*Wolff Pack. Co. vs. Court,* 262 U.S. 552; *Meyer vs. Nebraska,* supra.)

Where one provision of a statute is invalid, the whole must fall, where it is evident that the legislature would not have enacted the one without the other. (*Conolly vs. Union Sewer Pipe Co.,* 184 U.S. 540; *Little Rock, etc., Ry. vs. Worthen,* supra; *Spraigue vs. Thompson,* 118 U.S. 90.)

A subject may be clearly within the police powers but the enactment may be so unreasonable, unnecessary or inappropriate for the accomplishment of the purposes ostensibly disguised, that the court will declare it null and void. (*Dobbins vs. Los Angeles,* 195 U.S. 223.)

We do not contend that the Legislature might not, by a law applicable to all schools, safeguard the health, morals and welfare of the pupils; that it may not proscribe the teaching of anything subversive to our form of government or which is contrary to

the general welfare; but in so doing, the law must not infringe on the constitutional rights of the individual. (*Dobbins vs. Los Angeles,* supra.)

These objects must be accomplished by constitutional methods; a desirable end cannot be promoted by prohibited means. (*Meyer vs. Nebraska,* supra.)

The attempt to justify the law or any part of it, on the ground that it is necessary for the protection of the public health, morals or safety, if such be the position of counsel, must fail.

The provisions of the law have no real or substantial relation to these objects, and the purpose of the law is declared expressly to be otherwise. If such be counsel's position, we answer in the language of the Court in *Mugler vs. Kansas,* 123 U.S. 623, at p. 661:

> "There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, *Sinking Fund Cases,* 99 U.S. 718, . . the courts must obey the Constitution rather than the lawmaking department of the government, and must, upon their own responsibility, determine, whether in any particular case, these limits have been passed. 'To what purpose,' it was said in *Marbury vs. Madison,* 5 U.S. 1 Cranch, 137, 167, 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are

not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the Legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

IV

UNCONSTITUTIONAL DELEGATION OF POLICE POWER

We further insist that the Hawaii law is unconstitutional in that it delegates police power to the Board of Education to be exercised at its discretion (*Yick Wo vs. Hopkins,* 118 U.S. 356; *Noel vs. People,* 187 Ill. 587, 58 N.E. 616), and no standard is furnished by the statute for the guidance of the Board (*Adkins v. Children's Hospital,* 261 U.S. 525).

V

THE 1920 FEDERAL COMMISSION SURVEY

On pages 3, 4, 11, 12 and 13 of Petitioners' Brief reference is made to "A survey of education in Hawaii made in 1920 by a Federal Commission," and we notice that the petitioners have forwarded to the Court ten copies of this survey. The survey so extensively referred to in the brief of petitioners forms no part of the record in the case. The respondents had no opportunity of being heard on the subjects in-

volved in the survey and the findings of the Commission are in no sense binding upon these respondents. If, however, this Court should decide to examine this survey, we respectfully ask the Court to consider the addresses of the late Franklin K. Lane, recently Secretary of the Interior, and Philander P. Claxton, Commissioner of Education, on the subject of Americanism, found on pages 142 and 143 of said survey.

VI

TEACHERS' EXAMINATIONS. The law provides that all teachers employed in the Foreign Language Schools before receiving a permit shall satisfy the Department that they are possessed of the ideals of democracy, a knowledge of American history and institutions, and an ability to speak, read and write the English language, and before a teacher can receive a permit to teach in the Foreign Language Schools, he must pass an examination in these subjects. Not only must the teachers be so qualified, but those performing any administrative function with regard to the Japanese Language Schools are classified as teachers. (*Act of* 1923, *page* 123.) Those who perform administrative functions with reference to the schools are often people of the laboring class, plantation workers, fishermen, etc., and of course, are not educated in American ideals, principles of democracy and American history, nor are they, as a rule, able to speak, read and write the English language. As to the teachers, they are not employed to teach American history, principles of democracy or the English language. They are employed to teach the children how to read, write and speak

the Japanese language. The ability to speak, read and write English is a matter of no value in the Japanese Language Schools, and it makes no difference how many people receive licenses from the government after examination in the subjects named in the statute. From the brief of appellate, it would appear there are hundreds of persons qualified to teach in the Japanese Language Schools. There may be hundreds of persons who can pass examinations in the English language and in the ideals of democracy and American history and institutions and yet who are absolutely unable to teach the Japanese language. Indeed, they are as little qualified to so teach as the gentleman who prepared the government text book with its numerous errors.

VII

PECULIAR CONDITIONS IN HAWAII

The argument of counsel to justify the law because of peculiar conditions in Hawaii, suggested but not shown to exist, is so completely answered by the opinion of the court that further comment seems to be unnecessary. We wish to point out, however, that if there are peculiar circumstances in Hawaii relating to our foreign born population, there were similar circumstances in Nebraska and Ohio which were urged in support of the constitutionality of the acts relating to education in those states; but these peculiar circumstances did not deter this court from declaring the acts to be unconstitutional.

CONCLUSION

The Hawaiian law relating to foreign language schools, as said by the court below: "In both spirit

and purpose abridges the privileges and immunities of citizens of the United States and deprives them of liberty and property without due process of law."

We respectfully submit that the judgment of the Circuit Court of Appeals of the Ninth Circuit, declaring these statutes to be unconstitutional, should be affirmed.

Dated at Honolulu, this 23rd day of December, 1926.

JOSEPH LIGHTFOOT,

JOSEPH B. POINDEXTER,
Attorneys for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 465.—October Term, 1926.

Wallace R. Farrington, Governor of the Territory of Hawaii; William B. Lymer, Attorney General, etc., et al., Petitioners,
vs
T. Tokushige et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 21, 1927.]

Mr. Justice McReynolds delivered the opinion of the Court.

The Circuit Court of Appeals affirmed [11 Fed. (2d) 710] an interlocutory decree rendered by the United States District Court of Hawaii July 21, 1925, which granted a temporary injunction forbidding petitioners—Governor, Attorney General and Superintendent of Public Instruction of that Territory—from attempting to enforce the provisions of Act 30, Special Session 1920, Legislature of Hawaii, entitled, "An Act relating to foreign language schools and teachers thereof," as amended by Act 171 of 1923 and Act 152 of 1925, and certain regulations adopted by the Department of Public Instruction June 1, 1925. The interlocutory decree was granted upon the bill and affidavits presented by both sides. No answer has been filed. In these circumstances we only consider whether the judicial discretion of the trial court was improperly exercised.

Respondents claimed below and maintain here that enforcement of the challenged Act would deprive them of their liberty and property without due process of law contrary to the Fifth Amendment. Petitioners insist that the entire Act and the regulations adopted thereunder are valid; that they prescribe lawful rules for the conduct of private foreign language schools necessary for the public welfare; also that if any provision of the statute transcends the power of the Legislature it should be disregarded and the remaining ones should be enforced.

If the enactment is subject to the asserted objections it is not here seriously questioned that respondents are entitled to the relief granted.

There are one hundred and sixty-three foreign language schools in the Territory. Nine are conducted in the Korean language, seven in the Chinese and the remainder in the Japanese. Respondents are members of numerous voluntary unincorporated associations conducting foreign language schools for instruction of Japanese children. These are owned, maintained and conducted by upwards of five thousand persons; the property used in connection therewith is worth two hundred and fifty thousand dollars; the enrolled pupils number twenty thousand; and three hundred teachers are employed. These schools receive no aid from public funds. All children residing within the Territory are required to attend some public or equivalent school; and practically all who go to foreign language schools also attend public or such private schools. It is affirmed by counsel for petitioners that Japanese pupils in the public and equivalent private schools increased from one thousand, three hundred and twenty in 1900 to nineteen thousand, three hundred and fifty-four in 1920, and that out of a total of sixty-five thousand, three hundred and sixty-nine pupils of all races on December 31, 1924, thirty thousand, four hundred and eighty-seven were Japanese.

The challenged enactment declares that the term, "foreign language school," as used therein, "shall be construed to mean any school which is conducted in any language other than the English language or Hawaiian language, except Sabbath schools." And, as stated by the Circuit Court of Appeals, the following are its more prominent and questionable features.

"No such school shall be conducted in the territory unless under a written permit therefor from the Department of Public Instruction, nor unless the fee therefor shall have been paid as therein provided, and such permit shall be kept exposed in a prominent place at the school so as to be readily seen and read by visitors thereat.

"The fee prescribed is one dollar per pupil on the estimated average attendance of pupils at the school during the period during which such school was conducted during the next preceding school year, or if such school was not conducted during any part of such preceding school year, then at the same rate at the esti-

mated average attendance during the school year or unexpired part thereof in question, in which latter case the amount shall be adjusted to conform to the estimated average attendance during such year or part thereof.

"The amount of the fee shall be estimated and determined by the department from such information as it may have, and shall be payable by any person, persons or corporation conducting or participating in conducting such school; and all officers, teachers and all members of any committee or governing board of any such school, and in case such school is conducted by or for a corporation or voluntary association or other group of persons, all members or associates of such corporation, association or group shall be deemed to be participants in conducting such school. Provision is then made for the collection of the fees by suit, but that provision is not deemed material here.

"All permits must be renewed annually on the first day of September of each year and a similar fee must be paid, provided the department shall not be required to renew a permit for conducting any foreign language school, in the conducting of which there has been a violation of the terms of the Act.

"All fees collected by the department under the Act shall be paid over to the Treasurer of the Territory and the moneys so paid are appropriated to the department to be expended in enforcing and carrying out its provisions. If at any time the funds at the disposal of the department from fees previously collected or from royalties, commissions or other moneys received in connection with the publication or sale of foreign language school text-books shall make it possible to fully and effectively carry out the provisions of the Act with the permit fees payable by the schools based on a lower rate than one dollar per pupil, the department is authorized to make such a reduction in that rate as it may deem reasonable and expedient.

"Every person conducting a foreign language school shall, not later than June 15, of each year, file with the department on forms prescribed or furnished by it a sworn list of all pupils in attendance at such school during the current school year, showing the name, sex, parents or guardians, place of birth and residence of each child.

"No person shall teach in a foreign language school unless and until he shall have first applied to and obtained a permit so to do

from the department and this shall also be construed to include persons exercising or performing administrative powers at any school. No permit to teach in a foreign language school shall be granted unless and until the department is satisfied that the applicant for the same is possessed of the ideals of democracy; knowledge of American history and institutions, and knows how to read, write and speak the English language.

"It is the declared object of the Act to fully and effectively regulate the conducting of foreign language schools and the teaching of foreign languages, in order that the Americanism of the pupils may be promoted, and the department is directed to carry out the provisions of the Act in accordance with its spirit and purpose.

"Before issuing a permit to conduct a foreign language school or to teach in any such school the department shall require the applicant for such permit to sign a pledge that the applicant will, if granted a permit to teach in such a school, abide by and observe the terms of the Act, and the regulations and orders of the department, and will, to the best of his ability, so direct the minds and studies of pupils in such schools as will tend to make them good and loyal American citizens, and will not permit such students to receive instructions in any way inconsistent therewith.

"No foreign language school shall be conducted in the morning before the school hours of the public schools or during the hours while the public schools are in session, nor shall any pupil attend any foreign language school for more than one hour each day, nor exceeding six hours in any one week, nor exceeding thirty-eight weeks in any school year; provided, however, the department may in its discretion and with the approval of the Governor, modify this provision.

"The department shall have full power from time to time to prescribe by regulations the subjects and courses of study of all foreign language schools, and the entrance and attendance prerequisites or qualifications of education, age, school attainment, demonstrated mental capacity, health and otherwise, and the textbooks used in any foreign language school.

"Until otherwise provided by the department, the following regulations are in effect: Up to September 1, 1923, every pupil shall have first satisfactorily completed the American public school first grade, or a course equivalent thereto, before attending or

being allowed to attend any foreign language school. Beginning September 1, 1923, and thereafter, every pupil shall have satisfactorily completed the American public school first and second grades, or courses equivalent thereto, before attending or being allowed to attend any foreign language school. Beginning September 1, 1923, and thereafter, for grades one, two and three, and beginning September 1, 1924, and thereafter, for grades four and above, all new text-books used in elementary foreign language schools shall be based upon the principle that the pupil's normal medium of expression is English and shall contain, as far as practicable, English equivalents for foreign words and idioms.

"The department is authorized to prepare, or cause to be prepared, or procure or arrange for procuring suitable text-books for the teaching of foreign languages in the foreign language schools and to enter into an agreement or agreements for the publishing and sale of the same.

"All royalties, commissions and moneys received by or on behalf of the department in connection with the publication or sale of such text-books shall be paid over to the treasurer of the territory and shall be appropriated to the department to be expended for the purposes of the Act.

"In every foreign language school no subjects of study shall be taught, nor courses of study followed, nor entrance, nor attendance qualifications required, nor text-books used, other than as prescribed or permitted by the department. The latter regulations were only effective until superseded in whole or in part by others made by the department, and some such were thereafter made, but they are not deemed material to our present inquiry.

"The department has power to appoint one or more inspectors of foreign language schools and to pay the salary and necessary expenses therefor; such inspectors and other duly authorized agents of the department shall have the right freely to visit such foreign language schools and to inspect the buildings, equipment, records and teaching thereof and the text-books used therein.

"If the department shall at any time become satisfied that any holder of a permit to conduct a foreign language school or to teach therein does not possess the qualifications required by the Act, or shall have violated or failed to observe any of the provisions of the Act or of the regulations or orders of the department, the department may then and thereupon revoke the permit theretofore

granted and the same shall thereupon be and become null and void.

"Any person who shall conduct or participate in conducting a foreign language school or who shall teach in a foreign language school contrary to the provisions of the Act, or who shall violate or participate in violating any of the provisions thereof, or any of the regulations or orders of the department, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed $25, and each day's violation shall be deemed a separate offense.

"The Act further provides that if any section or part thereof is declared unconstitutional or invalid by the courts, the same shall not affect the validity of the Act as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid."

On June 1, 1925, the Department of Public Instruction adopted, and the Governor approved, certain regulations which undertook to limit the pupils who might attend foreign language schools to those who regularly attended some public school or approved private school, or had completed the eighth grade, or were over fourteen years of age. Also, to designate the text-books which foreign language schools should use in their primary grades.

The affidavit of T. Iwanaga, in support of motion for temporary injunction, states—

"That in the schools referred to in said bill, which are conducted for each grade for one hour for each school day, nothing contrary to American history and American institutions and principles of democracy is taught, the instruction being confined to the speaking, reading and writing of the Japanese language;

. . .

"That in the schools represented by plaintiffs there are about twelve thousand four hundred pupils and said schools employ about one hundred ninety-two teachers; that said teachers are paid and said schools are maintained from voluntary contributions and from the fees of the children attending said schools; that the provisions of said Act 152 of the Session Laws of 1925 are so drastic that the parents of children will be afraid to pay tuition fees and other persons will be afraid to contribute to the funds of said schools lest they be subjected to the pains and penalties provided in said Act, and that, therefore, unless immediate relief

is afforded by this Honorable Court, the said schools will be unable to pay the teachers' salaries and the expenses of conducting said schools and the property of plaintiffs in said schools will be utterly destroyed."

An affidavit of the Attorney General describes the litigation which has arisen under the legislation concerning foreign language schools. He does not disavow purpose to enforce all provisions of the challenged Act and regulations. An affidavit by the Superintendent of Public Instruction advances the opinion that respondents could pay the prescribed fees, that compliance with the foreign language school laws would not prevent the operation of schools which conduct kindergartens, and that elimination of the kindergartens would not materially affect them. Also, he says—

"That instruction in said Japanese Language Schools is not and cannot be confined to the speaking, reading and writing of the Japanese language, but extends to many subjects and even in so far as it is intended to have for its object the speaking, reading and writing of said language, the teaching of that is and must be largely through the medium of stories whether of history or fiction and in other ways then the mere teaching of letters and words and sentences. . . .

"That, in the opinion of this affiant, the parents of children will not because of the provisions of said Act 152 be afraid to pay tuition fees nor will other persons be afraid to contribute to the funds of such schools and this affiant denies that said schools will, unless immediate relief is afforded by this Honorable Court, be unable to pay the teachers' salaries and the expenses of conducting said schools, and denies that the property of plaintiffs in said schools will be utterly or at all destroyed."

The foregoing statement is enough to show that the school Act and the measures adopted thereunder go far beyond mere regulation of privately-supported schools where children obtain instruction deemed valuable by their parents and which is not obviously in conflict with any public interest. They give affirmative direction concerning the intimate and essential details of such schools, intrust their control to public officers, and deny both owners and patrons reasonable choice and discretion in respect of teachers, curriculum and text-books. Enforcement of the Act probably would destroy most, if not all, of them; and, certainly, it would

deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful. The Japanese parent has the right to direct the education of his own child without unreasonable restrictions; the Constitution protects him as well as those who speak another tongue.

Upon the record and the arguments presented, we cannot undertake to consider the validity of each separate provision of the Act and decide whether, dissociated from the others, its enforcement would violate respondents' constitutional rights. Apparently all are parts of a deliberate plan to bring foreign language schools under a strict governmental control for which the record discloses no adequate reason. Here, the enactment has been defended as a whole. No effort has been made to discuss the validity of the several provisions. In the trial court the cause proceeded upon the theory that petitioners intended to enforce all of them.

The general doctrine touching rights guaranteed by the Fourteenth Amendment to owners, parents and children in respect of attendance upon schools has been announced in recent opinions. *Meyer* v. *Nebraska,* 262 U. S. 390; *Bartels* v. *Iowa, id.* 404; *Pierce* v. *Society of Sisters,* 268 U. S. 510. While that amendment declares that no *State* shall "deprive any person of life, liberty or property without due process of law," the inhibition of the Fifth Amendment—"no person shall . . . be deprived of life, liberty or property without due process of law"—applies to the federal government and agencies set up by Congress for the government of the Territory. Those fundamental rights of the individual which the cited cases declared were protected by the Fourteenth Amendment from infringement by the States, are guaranteed by the Fifth Amendment against action by the Territorial Legislature or officers.

We of course appreciate the grave problems incident to the large alien population of the Hawaiian Islands. These should be given due weight whenever the validity of any governmental regulation of private schools is under consideration; but the limitations of the Constitution must not be transcended.

It seems proper to add that when petitioners present their answer the issues may become more specific and permit the cause to be dealt with in greater detail.

We find no abuse of the discretion lodged in the trial court. The decree of the Circuit Court of Appeals must be

Affirmed.